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Letter dated 20 January 2012 from the Ombudsperson addressed to the President of the Security Council

I have the honour to submit herewith the third report of the Office of the Ombudsperson, pursuant to paragraph 16 (c) of annex II to Security Council resolution 1989 (2011), according to which the Ombudsperson shall submit biannual reports to the Council summarizing her activities. The report describes the activities carried out by the Office of the Ombudsperson during the six-month period since the issuance of the previous report, from 21 July 2011 to 20 January 2012.

I would appreciate it if the present letter and the report were brought to the attention of the members of the Security Council and issued as a document of the Council.

(*Signed*) Kimberly **Prost**
Ombudsperson

12-21187 (E) 130212

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Report of the Office of the Ombudsperson pursuant to Security Council resolution 1989 (2011)

I. Background

1. The present report provides an update on the activities undertaken by the Office of the Ombudsperson since the submission of the second report of the Office pursuant to Security Council resolution 1989 (2011) (S/2011/447), of 21 July 2011.

II. Summary of activities: de-listing cases

General

2. The primary activities carried out by the Office of the Ombudsperson during the six-month period covered by the present report related to the de-listing requests submitted by individuals and entities.

De-listing cases

3. Seven new cases were submitted to the Office of the Ombudsperson during the reporting period, bringing the total number of de-listing petitions submitted since the establishment of the Office to 21 as at 20 January 2012. All of these were accepted and, at the time of reporting, were at various stages of the process provided for in annex II to resolution 1989 (2011). Unless requested by the petitioner, all names remain confidential while under consideration and in the event of the denial of the request or the withdrawal of the petition.

4. In total, 11 comprehensive reports have been submitted to the Committee since the Office was established, 5 of which were presented to the Committee during the reporting period. One of those 5 reports concerned a petition on behalf of an individual and 23 entities. The 5 reports contained recommendations in accordance with the revised regime set out in resolution 1989 (2011). The Ombudsperson appeared before the Committee on three occasions during the reporting period to present reports on four cases.[1]

5. Since the issuance of the second report of the Office, three individuals[2] and 6 entities[3] have been de-listed. The 6 entities were among 23 that had been the subject of a single request. A petition with respect to the remaining 17 entities and an individual is still before the Committee. No de-listing requests have been refused or withdrawn since the issuance of the second report. Cumulatively, since the Office was created, 13 cases[4] have been completed, five individuals and 6 entities have

[1] Reports on two of these cases had been submitted to the Committee at the time of the drafting of the second report of the Office; the reports on the other two cases were presented during the reporting period. Comprehensive reports on three additional cases have been submitted to the Committee since the issuance of the second report of the Office, but the Ombudsperson has yet to appear before the Committee in that regard.

[2] Shafiq ben Mohamed ben Mohamed al-Ayadi, Abdul Latif Saleh and Abu Sufian al-Salamabi Muhammed Ahmed Abd al-Razziq.

[3] Barakaat North America Inc., Barakat Computer Consulting, Barakat Consulting Group, Barakat Global Telephone Company, Barakat Post Express and Barakat Refreshment Company.

[4] Six of these cases were addressed as part of a single petition, as noted above.

been de-listed, one de-listing request has been refused and one petition has been withdrawn. Descriptions of the status of all of the cases as of the time of reporting are contained in the annex to the present report.

6. All seven requests submitted to the Office during the reporting period were made by individuals alone. Four of those seven individuals are represented by counsel. In total, 17 of the 21 cases submitted to the Office since its establishment have been brought by individuals alone, 2 by an individual together with one or more entities, and 2 by entities alone. In 11 of the 21 cases, the petitioner is/was assisted by legal counsel.

Working methods and standards

7. The Ombudsperson continues to consistently apply the same approach and standards, now adding a recommendation in each case as mandated by the Security Council in resolution 1989 (2011). The document entitled "Approach to and standard for analysis, observations, principal arguments and recommendation" has been amended to reflect this addition and is available from the website of the Office. While some standardization is reflected in the growing body of comprehensive reports, sufficient flexibility has been maintained in order to address the specific facts and circumstances of the individual cases. Greater experience has also allowed for a better understanding of key questions and issues of concern for the Committee, allowing the Ombudsperson to enhance her process in order to better address those matters in each instance.

8. The Ombudsperson remains satisfied that, in each case to date on which a comprehensive report has been submitted, the information-gathering and dialogue periods have been used successfully to draw out the relevant information relied upon in relation to the listing and to provide that information to the petitioner. Consistent with previous experience, with respect to each de-listing request examined since the issuance of the second report of the Office, the petitioner has been apprised of the case against him and has had the opportunity to provide a response, which has been incorporated into the comprehensive report submitted to the Committee.

9. In each of the five cases on which comprehensive reports were submitted to the Committee during the reporting period, the Ombudsperson asked questions of relevant States. The Ombudsperson also posed questions to all of the petitioners[5] and travelled to meet with two of them.[6] Questions posed to the petitioners have concerned, inter alia, matters raised by States and the Analytical Support and Sanctions Monitoring Team.

10. Since the issuance of the second report of the Office, the Ombudsperson has also worked on the new and pending requests on which comprehensive reports have yet to be completed. This has included circulating requests to relevant States and following up with their representatives, sometimes on multiple occasions. She has consulted with the Monitoring Team and conducted independent research, extensively in some cases, in order to gather relevant information.

[5] In the case relating to an individual and 23 entities, questions relevant to the entities were submitted to the individual.

[6] One additional petitioner was interviewed during the reporting period, but the comprehensive report on that case has yet to be submitted to the Committee.

11. During the reporting period, the Ombudsperson met with officials in five capitals on specific cases, either in conjunction with other consultations or by way of a separate trip, if merited. She also conducted face-to-face interviews with three petitioners.[7]

State cooperation

12. With the adoption of resolution 1989 (2011), the already pressing need for full State cooperation has become even more essential. Now that the Ombudsperson is responsible for submitting a recommendation with a "triggering" effect, it is even more imperative that States provide the Ombudsperson with relevant information in each case, to ensure that the report properly reflects all material that should be considered.

13. State cooperation continues to be strong. In the seven cases submitted to the Ombudsperson since the issuance of the second report of the Office, 26 requests for information have been sent thus far, to 10 States. In the five cases on which a comprehensive report was submitted to the Committee during the reporting period, responses were received from 20 of the 21 States contacted, with some States providing multiple responses. In addition, a number of Committee members provided information in response to the general circulation of a petition. Importantly, with regard to the same five cases, all designating States and States of residence provided responses; only one State of location/incorporation failed to reply.

Dialogue with the petitioner

14. During the reporting period, the Ombudsperson continued to ask questions of the petitioner in each of the cases that had reached, or advanced through, the dialogue phase. The petitioner responded in each case with respect to which dialogue had been completed. This exchange took various forms, including e-mail exchanges and telephone discussions, depending on the nature of the case. Bearing in mind the Security Council's preference for meetings with petitioners,[8] the Ombudsperson met with three petitioners during the reporting period. On two occasions, she also met with listed individuals who wished to discuss the possibility of submitting de-listing requests. In both cases, petitions were eventually received.

15. Exchanges with the petitioner in the dialogue phase continue to be vital for the effectiveness of the process. They provide the Ombudsperson with clearer insight as to the facts and underlying circumstances of each case. At the same time, they provide an important mechanism whereby the petitioner can respond to the case and provide information that will ultimately be reflected in the report presented to the Committee.

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[7] As noted above, comprehensive reports have been submitted on two of the cases in which the petitioners were interviewed; one case remains in the dialogue phase.

[8] Paragraph 6 (c) of annex II to Security Council rresolution 1989 (2011) states that the Ombudsperson should meet with the petitioner, to the extent possible.

Access to classified/confidential information

16. As the need for comprehensive information has become more pressing under the procedures provided for in resolution 1989 (2011), the challenges related to access to classified/confidential information have become even more acute.

17. Importantly, since the issuance of the second report of the Office, additional arrangements for access to classified/confidential information have been agreed with three States: Costa Rica, New Zealand and the United Kingdom of Great Britain and Northern Ireland. Added to the existing arrangements with Belgium and Switzerland, these bring the total number of such arrangements to five.

18. However, further progress on expanding the list — particularly to other States that are often implicated in de-listing petitions — is urgently needed. While efforts continue to be made to find practical solutions in the interim, lack of access to confidential information has been of concern in at least four recent cases.

19. The Ombudsperson has been aggressively pursuing this issue with a large number of States. Priority will continue to be placed on the issue in the upcoming period, with enhanced efforts to increase the number of agreements and arrangements, and a particular focus on those States that are most frequently involved in specific cases.

III. Summary of activities: development of the Office of the Ombudsperson

General

20. Activities to further develop and strengthen the Office of the Ombudsperson were limited during the reporting period, as a result of the increased caseload and the need to focus limited resources on the core functions of the Office. Nonetheless, efforts in this respect have continued to the extent possible.

Outreach and publicizing of the Office

21. The Ombudsperson delivered remarks on the work of her Office at the conference entitled "Globalization of crime: criminal justice responses", hosted by the International Centre for Criminal Law Reform and Criminal Justice Policy and the International Society for the Reform of Criminal Law and held from 7 to 11 August 2011, and at the annual conference of the Canadian Council on International Law, held from 3 to 5 November 2011, with both conferences taking place in Ottawa. She also participated in a panel on Security Council sanctions and human rights, at Columbia University on 29 November 2011. In addition, in an effort to reach a broader audience, the Ombudsperson contributed an article on the work of the Office to an upcoming publication entitled *Counter-Terrorism: International Law and Practice*.[9]

22. On 14 July, the Ombudsperson gave a briefing to States Members of the United Nations and to the press. The Ombudsperson also participated in briefings for new members of the Security Council at a seminar hosted by the United Nations

[9] Ana Maria Salinas de Friás, Katja Samuel and Nigel White, eds. (Oxford, Oxford University Press, 2012).

Institute for Training and Research on 15 November 2011, and at a seminar on Security Council sanctions for new Council members hosted by Security Council Report on 1 December 2011.

Interaction with the Security Council Committee pursuant to resolutions 1267 (1999) and 1989 (2011) concerning Al-Qaida and associated individuals and entities, and with the Monitoring Team

23. Since 21 July 2011, the Ombudsperson has appeared on three occasions before the Security Council Committee pursuant to resolutions 1267 (1999) and 1989 (2011) concerning Al-Qaida and associated individuals: on 26 July, to present the comprehensive reports on the cases relating to Shafiq ben Mohamed ben Mohamed al-Ayadi (de-listed; formerly QI.A.25.01) and Abdul Latif Saleh (de-listed; formerly QI.S.191.05); on 15 November, to present the comprehensive report on the case relating to Abu Sufian al-Salamabi Muhammed Ahmed Abd al-Razziq (de-listed; formerly QI.A.220.06); and on 13 December, to present the comprehensive report on case 8. The Ombudsperson has also provided a number of written updates to the Committee with regard to various cases as they have progressed through each phase.

24. Furthermore, the Ombudsperson has met with the Coordinator and members of the Monitoring Team on numerous occasions. At the operational level, there is ongoing communication with various experts on the Monitoring Team, as appropriate for particular cases. The Monitoring Team continues to provide the Ombudsperson with relevant information in individual cases in accordance with paragraph 3 of annex II to resolution 1989 (2011) and, on several occasions, has proposed questions for the petitioners. The Monitoring Team has also provided assistance with research and specific questions that have arisen in individual cases.

Liaison with States, intergovernmental organizations, United Nations bodies and non-governmental organizations

25. The Ombudsperson has continued her interaction with States over the past six months, placing particular emphasis on States of relevance to the de-listing petitions that have been presented. The Ombudsperson has met with representatives of 15 States in that context, meeting with some of them on multiple occasions. She has also engaged with several State experts on counter-terrorism matters. With regard to the question of agreements/arrangements for access to classified/confidential information, the Ombudsperson has written to 60 States and has met with representatives of 20 States and collectively with the representatives of the States members of the European Union. The Ombudsperson has also continued to meet with the informal group of like-minded States on targeted sanctions[10] and, on various occasions, has met with individual representatives of the European Union to discuss the operations of the Office. In addition, the Ombudsperson has taken advantage of operational trips in order to consult with relevant authorities in the capitals of various States.

26. Similarly, the Ombudsperson has continued to maintain liaison with representatives of the Counter-Terrorism Implementation Task Force, the Counter-Terrorism Committee Executive Directorate and the Financial Action Task Force on

[10] Comprising Austria, Belgium, Costa Rica, Denmark, Germany, Finland, Liechtenstein, the Netherlands, Norway, Sweden and Switzerland.

Money Laundering. On 19 October 2011, the Ombudsperson met with Ben Emmerson, the new Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, to discuss the work of the Office. The Ombudsperson and the Special Rapporteur continue to exchange information of relevance to both of their mandates.

27. To the extent possible given resource constraints, the Ombudsperson has sustained efforts to build relationships and work with civil society and non-governmental organizations, particularly those relating to human rights and sanctions. To this end, the Ombudsperson has interacted with academics and representatives of non-governmental organizations and civil society.[11]

Procedures and research

28. The Ombudsperson continues to follow developments with respect to relevant legal cases and to review press material and academic articles pertinent to the work of the Office. She continues to take available opportunities to discuss the broad range of issues related to the de-listing process with judges of national, regional and international courts, as well as with prosecutors and private lawyers, including representatives of the International Bar Association. The Ombudsperson has also discussed general legal issues of relevance with counsel in the Office of Legal Affairs and with experts from, inter alia, the Counter-Terrorism Committee Executive Directorate and the Monitoring Team.

Website

29. The Ombudsperson has continued to revise and develop the website of the Office. The website has been amended in several respects to reflect the changes in procedure provided for in resolution 1989 (2011). The site also now includes additional presentations by the Ombudsperson. Furthermore, a new section has been added that lists those States with which agreements/arrangements are in place for the sharing of confidential/classified information with the Office.

IV. Other activities

Notifications of listing

30. In accordance with paragraph 16 (b) of annex II to resolution 1989 (2011), when an individual or entity is added to the list and relevant States have been notified, the Ombudsperson is to send a notification directly to that individual or entity if there is a known address.

31. In the six months since the issuance of the second report of the Office, 10 entries have been added to the Al-Qaida Sanctions List. Each of those listings was considered with reference to the question of notification; in nine of the cases, however, no address was available or the address information provided was insufficiently detailed to provide a reasonable assurance that the notification would

[11] These have included representatives of Amnesty International; the Asia Pacific Civil-Military Centre of Excellence; the Australian National University Centre for International Governance and Justice School of Regulation, Justice and Diplomacy; the International Committee of the Red Cross; and the Netherlands Institute of International Relations Clingendael.

reach the addressee. In the case of Muhammad Jibril Abdul Rahman (QI.A.295.11), who was listed on 12 August 2011, notification letters were sent to possible addresses on 24 August 2011 on the basis of information included in the list entry.

32. In addition, over the course of the past six months, 56 notification letters have been sent to individuals with listed addresses who were included on the list when the Ombudsperson assumed her office. To date, 12 have been returned to sender, 2 have since petitioned for de-listing and 2 others have sent communications in response, which are being followed up.

Miscellaneous matters

33. The Ombudsperson has responded to various requests for information about the Security Council Committee pursuant to resolutions 1267 (1999) and 1989 (2011) concerning Al-Qaida and associated individuals and entities, and has provided public material in that regard, as appropriate. This has included assistance to States seeking information or clarifications, as well as requests made by individuals.

V. Future work

34. The priorities of the Ombudsperson remain consistent. The paramount activity of the Office will continue to be that related to de-listing requests, especially given the increased caseload. As anticipated in the second report, 14 of the total of 21 requests received by the Ombudsperson remained active as at 21 January 2012.

35. While it is difficult to anticipate the future caseload with any certainty, it is reasonable to assume that the Office will continue to receive requests at approximately the same rate during the next six-month period. On this basis, there will likely be 15-20 active cases by July 2012.

36. As mentioned above, the second priority matter will continue to be the development of arrangements or agreements for access to classified/confidential information. Resources permitting, the Ombudsperson will continue work to publicize the Office, as well as outreach and liaison activities.

VI. Observations and conclusions

37. The Office of the Ombudsperson has now been operational for 18 months, with several cases having reached completion. This experience clearly allows for further observations regarding the overall effectiveness of the process, as well as the identification of particular challenges. At the same time, it must be recognized that there has been very limited practice with respect to the new procedures established under resolution 1989 (2011). Further time and experience will be required in order to determine how those changes will operate and the overall impact that they will have on the fairness and transparency of the process.

Cooperation of States

38. The importance of State cooperation has been highlighted above. Since the issuance of the second report of the Office, the very good cooperation by States has been sustained.

39. As noted, the Ombudsperson is receiving replies to requests for information, including from key States holding the most relevant material. Nonetheless, problems identified previously persist. Some of the information submitted continues to lack the detail and specificity necessary for meaningful analysis. This has an impact in terms of the sufficiency of the material to support the case overall, and it limits the effectiveness of the dialogue with the petitioner, as few particulars are available to lend adequate precision to the discussion. In addition, frustration has been experienced in attempting to obtain confirmation or clarification from States concerning information that is in the public domain as a result of press reports or other means. It is evident that many of the challenges faced in this respect relate to the question of classified/confidential material, again highlighting the importance of reaching agreements with States on access to such material.

40. There also continue to be problems with regard to the timing of some of the responses received from States. The detailed process set out by the Security Council in annex II to resolution 1989 (2011) is time-sensitive. Its effectiveness is therefore dependent on information being provided within the prescribed periods. Late responses reduce the time available to the Ombudsperson to engage in dialogue with a petitioner and to prepare a comprehensive report. Ultimately, this can affect the fairness of the process. Given that the period for information-gathering has been extended and is now quite lengthy, it is important that States meet the deadlines for information-gathering set by the Security Council.

41. However, on the positive side, even at the early stages of implementation of the new procedures mandated under resolution 1989 (2011), it is clear that the Ombudsperson's mandate to provide a recommendation, combined with a "trigger" for de-listing, serves as a strong impetus for States to provide as much information as possible, in a timely manner. The consequences of a failure to do so will have a more direct impact on the decision to be taken in each case. In addition, in discussions with Member States, paragraph 25 of resolution 1989 (2011), in which the Security Council strongly urges Member States to provide all relevant information to the Ombudsperson, has proved useful in encouraging States to cooperate with the Ombudsperson.

Achieving key elements of fair process

42. Despite the challenges with respect to the gathering of information, there continue to be achievements in terms of enhancing the overall fairness and transparency of the process. In accordance with resolution 1989 (2011), the Ombudsperson and the Committee assess cases on the basis of the information made available to the Ombudsperson. Therefore, any lack of detail does not work to the prejudice of the petitioner. The information as gathered by the Ombudsperson, subject to any confidentiality restrictions, forms the case presented to the petitioner for response and is subsequently incorporated into and analysed in the comprehensive report. It also forms the basis for the recommendation of the Ombudsperson, and the Committee decisions taken since the adoption of resolution 1989 (2011) have been consistent with the recommendations made to date. Thus, the

experience gained so far demonstrates that the cumulative process allows the petitioner to know and respond to the case and to be heard by the decision maker. Furthermore, the decisions in each case are made after the Committee has received the independent, objective assessment and recommendation of the Ombudsperson, formulated on the basis of a thorough review of the relevant underlying information gathered.

43. There continues to be interaction between the Ombudsperson and the States members of the Committee with respect to the comprehensive reports, which demonstrates the serious and detailed consideration given to each de-listing petition. It is evident that the reports are being examined in capitals, and there have been exchanges with the Ombudsperson, involving several States, with respect to each case presented before the Committee.

44. Decisions in nine cases[12] have been taken in accordance with the revised procedure, all during the six-month period since the issuance of the second report of the Office. All have resulted in de-listing. To date, according to the information available to the Ombudsperson, no State has requested that a case be referred to the Security Council.

Effect of resolution 1989 (2011)

45. Overall, in the light of the application of the new procedures in the limited number of cases to date, it is already clear that the revised process encourages cooperation on the part of States with the Ombudsperson and serves to enhance the fairness and transparency of the decision-making process.

Reasons for decisions

46. The fairness of the process has also been strengthened by the Committee's evident determination to provide reasons for the decision taken in each case. With the exception of the cases only recently decided,[13] the Committee has provided the Ombudsperson with a notification of its decision in each of the cases, expressing reasons for the same, where de-listing was granted and in the single case where it was refused. The reasons have been communicated to the petitioner by the Ombudsperson. Under the terms of resolution 1989 (2011),[14] the Committee is required to provide reasons for the rejection of a de-listing request.

47. The Committee's efforts in this regard, which go beyond what is mandated, add to the overall reasonableness of the decision-making process, contributing to enhanced fairness and transparency. In addition, the Ombudsperson has been able to use the information provided in the reasons as a guide in subsequent cases, both in terms of dialogue with the petitioner and in assessing the sufficiency of information. In recognition of this, it would be helpful in future if consideration were given to

[12] Three individuals and six entities, as identified in footnotes 2 and 3. The six entities formed part of a single de-listing request.

[13] Relating to Abu Sufian al-Salamabi Muhammed Ahmed Abd al-Razziq, Barakaat North America Inc., Barakat Computer Consulting, Barakat Consulting Group, Barakat Global Telephone Company, Barakat Post Express and Barakat Refreshment Company, with respect to which reasons are expected to be provided in due course.

[14] See para. 13 of annex II. A similar requirement is set out in para. 33 of the resolution, with regard to objections by Committee members to de-listing requests.

mandating that reasons be given by the Committee to the de-listed person or entity, through the Ombudsperson or otherwise, in case of any decision to de-list.

Non-disclosure of the identity of designating States

48. Paragraph 29 of resolution 1989 (2011), in which the Security Council strongly urges relevant States to consent to the disclosure of their identity as designating States, has resulted in a number of positive changes. Since the issuance of the second report of the Office, consent to disclose has ultimately been received in each case in which it has been sought. However, in some instances, considerable follow-up has been required in order to gain the consent of all relevant States. Most notably, in cases involving more than one designating State, there has been understandable reluctance on the part of individual States to agree to the disclosure of one State's identity, without naming the other designating States. As a result, it has become possible for the refusal of one State to block the disclosure of any designating States in a particular case. While such cases have thus far been resolved in favour of disclosure, the potential problem remains. Moreover, the requirement that consent be sought from each State in each case is both difficult and time-consuming for the Ombudsperson to meet and adds to the already significant workload that needs to be undertaken with respect to individual de-listing petitions.

49. Therefore, it would be useful if the issue of the disclosure of the identity of designating States could be reconsidered with a view to allowing for such information to be provided where necessary for the fairness of the process, without the requirement that the consent of the relevant States be obtained.

Mandate for follow-up to de-listing/facilitating requests for exemptions

50. Further practice has served only to highlight once again the importance of empowering the Office of the Ombudsperson to follow up on cases relating to de-listed persons or entities who continue to face restrictions with respect to the movement of or access to funds or in relation to travel. In three of the five cases relating to individuals de-listed by the Committee through the Ombudsperson process, the de-listed person has subsequently contacted the Ombudsperson, claiming the continued application of sanctions measures after the de-listing. To date, it has been possible to address and respond to such concerns only in the context of purely informal discussions with States. The implications in terms of fairness for individuals and entities facing such unjustified restrictions are obvious. A far more effective response to such situations would be possible if the Ombudsperson were specifically mandated to follow up on such cases with relevant States or otherwise, as might be necessary.

51. Even more pressing is the question of the access of individuals and entities to the exemptions to the sanctions measures, which have been prescribed by the Security Council.[15] In four of the de-listing cases addressed during the reporting period, petitioners sought assistance from the Ombudsperson in presenting requests for exemptions to the Committee. Under the current mandate, the Ombudsperson has no ability even to facilitate the presentation of such a request by an individual or entity to the Committee. This proved problematic in the specific cases dealt with during the reporting period. Furthermore, in general, no recourse is available for an

[15] See para. 1 of resolution 1452 (2002) and para. 1 (b) of resolution 1989 (2011).

individual or entity to pursue such an exemption from the Committee other than through a State. Particularly for individuals residing in States with limited resources and capacity, this can mean that there is little potential for such exemptions to be realized, since such individuals are unable to have the matter presented before the Committee for consideration.

52. For these reasons and those set out in previous reports, it would be helpful if consideration were given to mandating the Office of the Ombudsperson to follow up on claims of the continued application of sanctions measures despite de-listing and to directly transmit exemption requests from individuals and entities to the Committee for its consideration.

Translation/administrative issues

53. As noted previously, annex II to resolution 1989 (2011) sets strict timelines for the work of the Ombudsperson and for the Committee's consideration of and decisions on petitions. Those timelines are an essential component of the fairness of the process, ensuring that the requests will be reviewed within a reasonable and finite period.

54. In accordance with resolution 1989 (2011), the 30-day time period for the Committee's consideration of a de-listing request commences 15 days after the comprehensive report has been submitted to the Committee in all official languages of the United Nations. During the reporting period, owing to resource constraints, difficulties were encountered in some cases in obtaining translations of comprehensive reports in a timely manner, delaying the Committee's consideration of the reports. In a time-sensitive procedure, this can obviously have an impact on the overall fairness of the process.

55. In addition, the general guidelines concerning word limits for translation, applicable to parliamentary documents in the United Nations system, are being applied to the comprehensive reports of the Ombudsperson. In combination, full translation as a prerequisite for the consideration of a report by the Committee and word limits as to what can be translated create a practical limitation on the content of the Ombudsperson's comprehensive reports, potentially encumbering the independence of the Office. Given that the comprehensive reports serve as a critical mechanism for fair process, this raises a serious concern.

56. Within this context, and given resource constraints and the time needed to translate lengthy documents, the problem was raised with relevant Secretariat officials. Consultations were undertaken in order to manage and mitigate any adverse effects on the process of the Office of the Ombudsperson. A compromise was agreed that should allow for timely translation and a degree of flexibility with respect to word limits. However, the matter remains an issue of concern and will need to be monitored.

57. It is clear that the translation of the comprehensive reports into all official languages of the United Nations is an important component of fair process, aimed at ensuring that States have an opportunity to fully and properly review the material, and as reflected in resolution 1989 (2011). However, in some circumstances, balancing the competing interests involved may require the prioritization of some parts of the reports for immediate translation or other, similar measures to ensure that a case can be considered by the Committee on a timely basis. For this reason, it

would be useful if the responsibility for such matters rested solely with the Committee, the body best placed to make such determinations. To that end, it would be helpful if consideration were given to amending annex II so as to give the Committee the flexibility to determine when the requirements for translation have been met sufficiently to allow for the consideration of the de-listing petition and the comprehensive report by the Committee.

Resources

58. Resource needs identified in the previous reports of the Ombudsperson and recognized by the Security Council in resolution 1989 (2011)[16] have been addressed. In line with the request of the Secretary-General, the General Assembly has approved the establishment of two dedicated positions to strengthen the Office of the Ombudsperson: a Professional Officer (P-4) and an Administrative Assistant. Steps are being taken to fill those positions as quickly as possible. Furthermore, additional funds have been allocated to cover the translation of material received from or to be transmitted to petitioners or of relevant material in specific cases that is not submitted in one of the six official languages of the Organization. The Department of Political Affairs provided assistance in spearheading the request for resources through the budgetary process.

59. Experience gained during the reporting period further demonstrated the importance of establishing these dedicated positions at this stage in the development of the Office of the Ombudsperson. While the Department of Political Affairs continued its efforts to provide support, the challenges posed, particularly by the increased caseload, highlighted the need for a more definitive and structural solution.

60. Despite these challenges, by prioritizing its core functions, the Office managed to continue to fulfil its central mandate of assisting the Committee with respect to de-listing petitions during the reporting period. However, related urgent tasks such as work on agreements on access to confidential/classified information and outreach activities were curtailed. The addition of committed resources will, it is hoped, allow for enhanced efforts with respect to these issues, in addition to increased efficiency in carrying out the work related to the core functions of the Office. Overall, the additional resources will be of significant assistance in ensuring that the Office of the Ombudsperson can continue to fully meet the mandate entrusted to it by the Security Council.

[16] See para. 24.

Annex

Status of cases

Case 1 (Status: denied)

Date	*Description*
28 July 2010	Transmission of case 1 to the Security Council Committee established pursuant to resolutions 1267 (1999) and 1989 (2011) concerning Al-Qaida and associated individuals and entities
28 February 2011	Comprehensive report submitted to the Committee
10 May 2011	Presentation of the comprehensive report by the Ombudsperson to the Committee
14 June 2011	Committee decision
1 September 2011	Formal notification to petitioner setting out reasons

Case 2, Safet Ekrem Durguti (Status: de-listed)

Date	*Description*
30 September 2010	Transmission of case 2 to the Committee
26 April 2011	Comprehensive report submitted to the Committee
31 May 2011	Presentation of comprehensive report by the Ombudsperson to the Committee
14 June 2011	Committee decision to de-list
12 August 2011	Formal notification to petitioner setting out reasons

Case 3 (Status: de-listing request withdrawn by petitioner)

Date	*Description*
3 November 2010	Transmission of case 3 to the Committee
14 June 2011	Comprehensive report submitted to the Committee
26 July 2011	Presentation of the comprehensive report by the Ombudsperson to the Committee
2 August 2011	Withdrawal of petition

Case 4, Shafiq ben Mohamed ben Mohamed al-Ayadi (Status: de-listed)

Date	*Description*
6 December 2010	Transmission of case 4 to the Committee
29 June 2011	Comprehensive report submitted to the Committee
26 July 2011	Presentation of the comprehensive report by the Ombudsperson to the Committee
17 October 2011	Committee decision to de-list
8 November 2011	Formal notification to petitioner setting out reasons

Case 5, Tarek ben al-Bechir ben Amara al-Charaabi (Status: de-listed)

Date	*Description*
30 December 2010	Transmission of case 5 to the Committee
26 April 2011	Comprehensive report submitted to the Committee
31 May 2011	Presentation of the comprehensive report by the Ombudsperson to the Committee
14 June 2011	Committee decision to de-list
12 August 2011	Formal notification to petitioner setting out reasons

Case 6, Abdul Latif Saleh (Status: de-listed)

Date	*Description*
14 January 2011	Transmission of case 6 to the Committee
17 June 2011	Comprehensive report submitted to the Committee
26 July 2011	Presentation of the comprehensive report by the Ombudsperson to the Committee
19 August 2011	Committee decision to de-list
8 November 2011	Formal notification to petitioner setting out reasons

Case 7, Abu Sufian al-Salamabi Muhammed Ahmed Abd al-Razziq (Abousfian Abdelrazik) (Status: de-listed)

Date	*Description*
28 January 2011	Transmission of case 7 to the Committee
23 September 2011	Comprehensive report submitted to the Committee

Date	*Description*
15 November 2011	Presentation of the comprehensive report by the Ombudsperson to the Committee
30 November 2011	Committee decision to de-list

Case 8 (Status: committee phase)

Date	*Description*
17 March 2011	Transmission of case 8 to the Committee
23 September 2011	Comprehensive report submitted to the Committee
13 December 2011	Presentation of the comprehensive report by the Ombudsperson to the Committee
27 December 2011	Committee decision to de-list six entities; remainder of request pending

Case 9 (Status: dialogue phase)

Date	*Description*
19 April 2011	Transmission of case 9 to the Committee
21 October 2011	Information-gathering phase ends
21 February 2012	Deadline for the completion of the dialogue phase

Case 10 (Status: Committee phase)

Date	*Description*
6 May 2011	Transmission of case 10 to the Committee
6 September 2011	Information-gathering phase ends
9 January 2012	Comprehensive report submitted to the Committee

Case 11 (Status: Committee phase)

Date	*Description*
1 June 2011	Transmission of case 11 to the Committee
1 November 2011	Information-gathering phase ends
19 January 2012	Comprehensive report submitted to the Committee

Case 12 (Status: dialogue phase)

Date	*Description*
30 June 2011	Transmission of case 12 to the Committee
14 November 2011	Information-gathering phase ends
19 March 2012	Deadline for the completion of the dialogue phase

Case 13 (Status: Committee phase)

Date	*Description*
7 July 2011	Transmission of case 13 to the Committee
7 November 2011	Information-gathering phase ends
14 December 2012	Comprehensive report submitted to the Committee

Case 14 (Status: dialogue phase)

Date	*Description*
20 July 2011	Transmission of case 14 to the Committee
19 December 2011	Information-gathering phase ends
20 February 2012	Deadline for the completion of the dialogue phase

Case 15 (Status: dialogue phase)

Date	*Description*
4 August 2011	Transmission of case 15 to the Committee
19 December 2011	Information-gathering phase ends
20 February 2012	Deadline for the completion of the dialogue phase

Case 16 (Status: dialogue phase)

Date	*Description*
15 August 2011	Transmission of case 16 to the Committee
15 December 2011	Information-gathering phase ends
15 February 2012	Deadline for the completion of the dialogue phase

Case 17 (Status: information-gathering phase)

Date	*Description*
26 September 2011	Transmission of case 17 to the Committee
26 January 2012	Deadline for the completion of the information-gathering phase

Case 18 (Status: information-gathering phase)

Date	*Description*
5 October 2011	Transmission of case 18 to the Committee
6 February 2012	Deadline for the completion of the information-gathering phase

Case 19 (Status: information-gathering phase)

Date	*Description*
16 November 2011	Transmission of case 19 to the Committee
16 March 2012	Deadline for the completion of the information-gathering phase

Case 20 (Status: information-gathering phase)

Date	*Description*
21 November 2011	Transmission of case 20 to the Committee
22 March 2012	Deadline for the completion of the information-gathering phase

Case 21 (Status: information-gathering phase)

Date	*Description*
3 January 2012	Transmission of case 21 to the Committee
3 May 2012	Deadline for the completion of the information-gathering phase

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Report of the Secretary-General on specialized anti-piracy courts in Somalia and other States in the region

I. Introduction

1. The present report is submitted pursuant to paragraph 16 of Security Council resolution 2015 (2011) of 24 October 2011, in which the Council decided to continue its consideration, as a matter of urgency, of the establishment of specialized anti-piracy courts in Somalia and other States in the region with substantial international participation and/or support. The Council requested that the Secretary-General, in conjunction with the United Nations Office on Drugs and Crime (UNODC) and the United Nations Development Programme (UNDP), further consult with Somalia and regional States willing to establish such anti-piracy courts on the kind of international assistance, including the provision of international personnel, that would be required to help make such courts operational; the procedural arrangements required for transfer of apprehended pirates and related evidence; the projected case capacity of such courts; and the projected timeline and costs for such courts, and to provide the Council with detailed implementation proposals for the establishment of such courts, as appropriate.[1]

2. The prosecution of suspected pirates and imprisonment of those convicted are being addressed by the Somali authorities and other States in the region with the assistance of UNDP, UNODC and the United Nations Political Office for Somalia (UNPOS) in the context of their work to develop the capacity of national courts. The present report has been prepared on the basis of that experience and of further consultations by UNDP with the Somali authorities and by UNODC with the authorities in Kenya, Seychelles, Mauritius and the United Republic of Tanzania — the States in the region that are either prosecuting piracy cases with United Nations assistance or are engaged with UNODC to consider the possibility of doing so.[2] The Office of Legal Affairs has consulted the Permanent Missions of each of the Member States addressed in the present report, and the Chairman of Working Group 2 of the Contact Group on Piracy off the Coast of Somalia (the Contact Group).[3] While every

[1] In paragraph 17 of resolution 2015 (2011), the Council underlined the importance for such courts to have jurisdiction not only over suspects captured at sea, but also anyone who incites or intentionally facilitates piracy operations, including key figures of criminal networks involved in piracy who illicitly plan, organize, facilitate, or finance and profit from such attacks.

[2] Other States in the region conducting prosecutions include France (the Comoros), Madagascar, Oman, the United Arab Emirates, Yemen and India.

[3] Thomas Winkler, Under-Secretary for Legal Affairs, Ministry of Foreign Affairs of Denmark, and Chairman of Working Group 2 of the Contact Group.

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effort has been made to ensure the accuracy of the information set out in the report, it has not been possible to verify it independently in every instance. The State of Qatar has written to the Secretary-General to indicate its readiness to host an anti-piracy court and has requested that the United Nations follow up with a view to determining the next steps.

3. Section II of the present report updates the information given in previous reports concerning incidents of piracy off the coast of Somalia and prosecutions by States. The international assistance received and the further international assistance that would be required for specialized anti-piracy courts in Somalia, Seychelles, Kenya, Mauritius and the United Republic of Tanzania are set out in section III. In section III the proposal for the establishment of an extraterritorial Somali anti-piracy court is also briefly reviewed and the proposed establishment of a regional prosecution centre in the Seychelles is discussed. Possible detailed implementation proposals are set out in section IV, and section V contains conclusions. In each of the concerned jurisdictions, the courts conducting piracy prosecutions do so under national law within the framework of their existing court structure. The UNDP and UNODC consultations indicate that the national authorities would not favour establishing new special courts with jurisdiction exclusive to piracy offences, which they consider may constrain scarce prosecution and judicial resources to piracy cases in the absence of any certainty that they would be consistently and fully occupied. The term "specialized anti-piracy court", as used in the present report, should therefore be understood to refer to a court operating under national law, with international assistance and with a focus on the prosecution of piracy offences.

4. In respect of each jurisdiction, the present report assesses the current capacity and international assistance received to date to conduct piracy cases and the further international assistance that would be required for a specialized anti-piracy court to conduct cases in accordance with international standards of fairness.[4] For each jurisdiction, a projection is made of the caseload capacity that could be achieved, as well as timelines and costs. Although the request of the Security Council does not refer to international assistance for the imprisonment of suspected and convicted pirates, this has been included in the report because consultations have demonstrated that it is a key element in the capacity of States to receive transfers of suspects from patrolling naval States.[5]

5. In the consultations conducted by the Office of Legal Affairs, each of the Permanent Missions referred to above confirmed the commitment of their Government to combating piracy off the coast of Somalia. It was clear that those

[4] Articles 10 and 11 of the Universal Declaration of Human Rights and articles 9, 14 and 15 of the International Covenant on Civil and Political Rights. The protection of the human rights of the suspects under applicable international human rights instruments is incorporated in the transfer arrangements between naval States and organizations and regional prosecuting States, as well as in the agreements between Seychelles and the Transitional Federal Government, "Puntland" and "Somaliland" for the transfer of convicted pirates for imprisonment in Somalia.

[5] UNODC and UNDP assist States in the region with prison facilities, with the goal of achieving imprisonment in accordance with international standards: the Standard Minimum Rules for the Treatment of Prisoners, adopted by the First United Nations Congress on the Prevention of Crime and Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council in its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977, and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by the General Assembly in its resolution 43/173 of 9 December 1988.

States in the region that are conducting piracy prosecutions consider that they have taken on a heavy responsibility that entails a commitment of national resources as well as security risks. It is important both to acknowledge the important prosecution role that they are playing and to strive to ensure that their national commitment is matched by strong support and assistance from the international community. They emphasized the continuing need for contributions by States, international organizations and the shipping industry to the Trust Fund to Support Initiatives of States Countering Piracy off the Coast of Somalia. They also underlined that a sustainable response to piracy off the coast of Somalia requires the re-establishment of peace, security and the rule of law in Somalia and social and economic development for the Somali people.

6. The consultations reinforced the need for clarity in the present report concerning the projected capacities of specialized anti-piracy courts in States in the region. The projections made in section III and the detailed implementation proposals set out in section IV present the maximum caseload capacities that UNDP and UNODC consider could be achieved through the further international assistance set out in the present report. However, planning for the caseload capacities of specialized anti-piracy courts in States in the region should take account of the anticipated numbers of piracy suspects likely to be apprehended at sea and transferred to those States for prosecution. The three naval coalitions[6] engaged in anti-piracy operations off the coast of Somalia have made only three requests to regional States for the transfer of piracy suspects during 2011, and only one incident was reported in which the suspects were released in circumstances where there may have been sufficient evidence to pursue prosecution.[7] In 2011, Kenya received one request for the transfer of 24 piracy suspects, and Seychelles received two requests for the transfer of a total of 18 piracy suspects.[8]

7. In other words, of the total of 286 reported piracy attacks in 2011, only 4 resulted in any of the 3 naval coalitions considering that there would be sufficient evidence to warrant transfer of persons in their custody to a regional State for prosecution. It would therefore be prudent to make an assessment, with the assistance of the naval coalitions and other States active in naval operations, of the underlying reasons for the low number of requests for transfer of suspects to regional States and the likely anticipated demand for prosecution capacity in regional States for the foreseeable future. With the assistance of the various naval coalitions and States, such an assessment could help to determine the number of incidents in which piracy suspects were apprehended, the number in which the suspects were released and the reasons for each release. This may provide valuable

[6] The Combined Task Force 151 of the Combined Maritime Forces; the European Union Naval Force Somalia (EU NAVFOR); and the Standing Naval Group of the North Atlantic Treaty Organization. The efforts of these coalitions are complemented by the naval forces of other States, including China, India, Iran (Islamic Republic of), Japan, Kenya, Malaysia, the Russian Federation, Saudi Arabia, South Africa and Yemen.

[7] Enquiries were made of each of these naval coalitions, and only one such release was indicated by the Combined Task Force. No similar information is available about releases by other States' naval forces.

[8] At the time of issuance of the present report, there were four groups of suspects held on naval vessels at sea, by the United States of America, Denmark, the United Kingdom of Great Britain and Northern Ireland and the European Union (Spain). The Secretary-General understands that the six suspects held by Spain may be transferred to Spain. It is unclear at this stage where the other groups of suspects may be transferred.

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Country	*Number held*	*Notes*
Belgium	1	1 convicted
Comoros	6	
France	15	5 convicted
Germany	10	
India	119	
Japan	4	
Kenya	143	50 convicted
Madagascar	12	
Malaysia	7	
Maldives	37	Awaiting deportation in absence of a law under which to prosecute
Netherlands	29	10 convicted
Oman	22	All convicted
Seychelles	70	63 convicted
Somalia		
"Puntland"	290	Approximately 240 convicted
"Somaliland"	94	68 convicted (approximately 60 subsequently released)
South Central	18	Status of trial unclear
Republic of Korea	5	5 convicted, appeal pending before the Supreme Court
Spain	2	Both convicted
United Arab Emirates	10	
United Republic of Tanzania	12	6 convicted
United States of America	28	17 convicted
Yemen	129	123 convicted and 6 acquitted
Total States: 20	**1 063**	

III. International assistance for specialized anti-piracy courts in Somalia, Seychelles, Kenya, Mauritius and the United Republic of Tanzania[10]

11. The consideration of specialized anti-piracy courts in this section focuses on the legal framework in each of the above jurisdictions, the current capacity to conduct piracy prosecutions, the international assistance received to date and the further assistance that would be needed for a specialized anti-piracy court. Consideration is given to each of the main components of the criminal process — investigations, prosecution, the courts, legal aid and defence representation, and prisons. The scope for participation by international judges, advocates and other

[10] The information in this section and the assessments made are provided by UNDP and UNODC.

legal professionals is assessed. In the case of Somalia, this includes the possibility for participation by experts from the Somali diaspora.[11]

A. Somalia[12]

Legal framework

12. Somalia's legal system consists of a formal legal sector, Sharia law and customary law, known as "Xeer". These three elements operate in parallel, and the distinction in their application is not always clear. The formal justice system, which reflects both civil and common law traditions, is not administered systematically, even where more formal governmental structures are in place in "Puntland" and "Somaliland". The Penal Code and the Criminal Procedure Code have largely not been updated since 1960, and are not available in the Somali language. UNDP and UNODC assessments indicate that the criminal and procedural codes in the three main regions of Somalia are out of date and contain numerous inconsistencies and deficiencies. They have assisted legal experts from the Transitional Federal Government, "Puntland" and "Somaliland" to form a Somalia Law Reform Programme Expert Group (the Law Reform Group), which has drafted and agreed upon anti-piracy legislation, prison and prisoner transfer legislation. UNPOS is encouraging the transitional federal institutions to pass appropriate counter-piracy legislation before the end of the transitional period, and the Somalia End of Transition Road Map (see S/2011/759, annex) tasks the Transitional Federal Government with enacting anti-piracy legislation by 18 May 2012.[13]

13. Against this background, and given the low numbers and level of training of legal professionals in each of the regions of Somalia (see S/2011/360, annex III, sect. A), increasing the capacity to conduct the prosecution of piracy cases is a major, long-term challenge. To investigate or conduct more complex prosecutions involving those suspected of financing, planning or organizing acts of piracy would be even more challenging. The capacity-building assistance in "Puntland" and "Somaliland" referred to in this section focuses on the prosecution of piracy rather than those more complex crimes. Training and mentoring by international experts is an integral part of the assistance being provided by UNDP, but there is currently no legislative basis for the participation of foreign nationals in proceedings in judicial or prosecutorial posts, and the authorities do not favour such participation. UNDP will actively explore the possibility of using experts drawn from the Somali diaspora as it moves forward with its plans for assistance. Details of the availability of legal professionals from the Somali diaspora were set out in the report of the Secretary-General of 15 June 2011 (S/2011/360, annex III, sect. B). The security situation in Somalia, including in "Somaliland" and "Puntland", is also a limitation on efforts to

[11] In the case of the other States considered in this section, there may also be scope for participation by experts from their diasporas.

[12] UNDP assesses that the security situation in Somalia is such that it is not possible at this stage to provide assistance for specialized anti-piracy courts other than in "Puntland" and "Somaliland". Some limited judicial and prosecutorial training has been possible; UNDP has supported 27 legal aid centres throughout Somalia, working through bar associations, university law faculties and local non-governmental organizations (see S/2011/759).

[13] In consultations with the Permanent Mission of Somalia, it was indicated to the Office of Legal Affairs that the prospects for the adoption of legislation may be enhanced after the end of the transitional period, when a newly elected Parliament is in place.

increase capacity, and in particular, on the possibilities for the deployment of international experts.

"Puntland"

Legal framework

14. "Puntland's" penal code and code of criminal procedure are those of Somalia, which do not expressly cover piracy offences. "Puntland" Piracy Law No. 6 of 18 December 2010 was passed by the "Puntland" parliament, based on legislation drafted by the Law Reform Group with the assistance of UNODC, but was amended in terms that are not consistent with the definition of piracy set out in the United Nations Convention on the Law of the Sea. The legislation, if amended appropriately and adopted, will make it an offence for anyone to finance, provide transport by air, land or sea, or provide weapons or any other equipment which facilitates the abduction of marine transport. The jurisdiction of "Puntland" over piracy offences would extend to acts committed anywhere on the high seas, and does not require a connection to "Puntland" (such as the nationality of the ship attacked, or the perpetrators or crew).

Current capacity, international assistance received and further assistance needed for a specialized anti-piracy court

15. "Puntland" courts have conducted some 30 cases involving about 290 piracy suspects. They have been heard in the assize courts in Boosaaso, Garoowe and Galkayo by a total of 18 judges. Approximately 240 of the suspects have been convicted. The challenges that the proceedings have faced include delays, lack of defence counsel, the lack of formal legal training of judges and other legal professionals, lack of secure and properly equipped courtrooms, and other infrastructure and resource issues. There have been concerns about bribery, and this is being tackled through a code of conduct, approved by the "Puntland" High Judicial Council, that will apply to the judiciary and the prosecution service.

16. The security situation in "Puntland" for prosecutors and judicial personnel is a major concern. Since the end of 2009, seven judges and prosecutors have been assassinated, and the Attorney General, the Deputy Chief Justice and a further prosecutor have escaped assassination attempts. Around 10 per cent of the prosecutors and judiciary in "Puntland" have been the subject of attacks. UNDP will develop options to address the problem, including enhancement of the "Puntland" police close protection capacity and provision of equipment to enhance security in courtrooms, such as metal detectors.

Investigations

17. There are approximately 150 officers assigned to investigations of the Criminal Investigation Division of the police force at key locations, including the main cities of Garoowe, Boosaaso, Qardho and Galkayo. They investigate serious criminal cases, including piracy, and present evidence in court. They face severe challenges, including a low level of basic investigation skills and the lack of established operational procedures, infrastructure, transport, and search or forensic equipment. Over the last 12 months, UNDP has trained 100 Criminal Investigation Division officers in investigations, operational procedures and basic forensic skills, and has provided police equipment. UNDP has improved police management

capabilities and will provide police mentoring and advice through specialized Criminal Investigation Division experts, and international and national UNDP civilian police staff. UNDP is constructing a new police headquarters in Garoowe, rehabilitating a police station in Boosaaso and providing additional vehicles. It will also assist with the drafting of a police act, regulations and a code of conduct. UNDP plans are advanced to establish a national crime directorate in 2012, which will incorporate a counter-piracy unit with operational teams based in Boosaaso, Garoowe and Galkayo.

18. With further training of Criminal Investigation Division officers on investigative techniques, the rehabilitation of Division offices and the provision of forensic equipment, UNDP assesses that the "Puntland" police could have the capacity to investigate piracy crimes effectively within 20 months. UNDP will also conduct a maritime policing needs assessment in the first half of 2012.

Prosecution

19. There are 10 prosecutors in the "Puntland" Attorney General's Office, 3 of whom have conducted piracy prosecutions. UNDP has provided basic training in substantive and procedural criminal law and a six-month programme through "Puntland" State University and the East African University to key prosecution staff and the judiciary. The prosecutors have received training by international Criminal Investigation Division prosecution experts. UNDP will train an additional 12 serving police officers to work as police prosecutors to support the prosecution service. It will also construct an Attorney-General's Office in Garoowe, provide vehicles for the Attorney-General's Offices in Garoowe and Boosaaso, help to establish a case management system and provide further training and mentoring by international experts, as well as equipment. UNDP estimates that, with this further assistance, the Attorney-General's Office will achieve the capacity to prosecute piracy cases effectively within 20 months.

Courts, including legal aid and representation

20. Piracy trials in "Puntland" are heard in the assize courts, which are the courts of first instance and comprise a bench of three judges. Appeals go to the assize section of the appeals courts and can possibly go on to the Supreme Court. There are a total of 53 judges sitting in 17 assize courts, 4 appeal courts and the Supreme Court. Basic training has been provided in substantive and procedural law to 80 members of the judiciary, registrars and court support staff. UNDP has constructed and/or rehabilitated court premises in Garoowe, Qardho, Boosaaso and Galkayo, and established four mobile courts to travel to rural areas to hear cases. UNDP has also piloted a case management system in Garoowe, trained lawyers and staff in the Ministry of Justice, supported legal studies at the "Puntland" State University in Garoowe and provided copies of laws, as well as information technology equipment and vehicles. UNDP funds legal aid, including eight lawyers to provide free legal assistance and representation. All piracy suspects who do not have their own counsel are now provided with legal representation.

21. UNDP has received funds from the Trust Fund to Support Initiatives of States Countering Piracy off the Coast of Somalia to implement a three-year piracy trials programme to assist the authorities to conduct piracy trials in "Puntland" in accordance with international standards. It includes construction of a dedicated

court to hear piracy cases, further amendment of the Piracy Law, the Penal Code and the Code of Criminal Procedure and their translation into Somali, capacity-development of the High Judicial Council, a package of training and mentoring for judges and support staff, and provision of courtroom equipment, including to enable evidence to be given by video link. There will be periodic monitoring by international experts to ensure that trials are in accordance with international standards. UNDP assesses that, with this further assistance, the "Puntland" courts could have capacity to try piracy cases in accordance with international standards within two years.

Prisons

22. UNDP and UNODC assess that current prison capacity is not sufficient and faces challenges, including overcrowding and a lack of basic medical facilities, water and sanitation, as well as a lack of opportunities for rehabilitative study and exercise. UNDP is building a new prison in Qardho, with an additional capacity of 266 inmates, which will be completed and handed to the "Puntland" authorities in April 2012 or thereabouts. UNODC has worked to expand prison space and to improve water and sanitation facilities at the prison in Boosaaso and is building a new prison, a prison headquarters and a training academy in Garoowe. The prison will have the capacity to hold 500 persons and will be made available to the "Puntland" authorities in 2013. It will be primarily for convicted pirates repatriated from other jurisdictions. It will be mentored and subject to independent monitoring to enable it to operate in accordance with international standards. Further, UNODC has assisted the Law Reform Group to draft a prison law to place the running of prisons on a sound footing and to provide a legal basis for the receipt of prisoners convicted of piracy in other jurisdictions. The Government of Norway has seconded two prison advisers for two years from November 2011 to assist UNODC with this work.

Projected capacity, timeline and costs of a specialized anti-piracy court

23. The assistance set out above would enable effective piracy investigations within 20 months, and within two years would result in trials in accordance with international standards in two courts with a capacity to hear 24 trials per year, with up to 10 defendants per case. The assistance in support of investigations would be provided for three years, and would cost a total of $1.1 million. Support to the courts would be for two years, with a further year thereafter of mentoring and monitoring. The total cost of that support over the three-year period, including 12 additional prosecutors would be $2.6 million. The Garoowe prison project will cost $9.8 million over 3 years, of which the first two ($8 million) are fully funded. The Qardho prison will cost a total of $1.5 million.

Transfers of suspects, evidence and prisoners

24. "Puntland" does not have any agreements with naval States or organizations to receive piracy suspects for trial in its courts. In practice, such agreements will not be entered into until naval States are satisfied that trials in "Puntland" are capable of meeting the human rights provisions that naval States and organizations include in such agreements. "Puntland" entered into a memorandum of understanding with Seychelles in April 2011, which follows the same framework as the agreement between the Transitional Federal Government of Somalia and Seychelles, for the

transfer of convicted pirates for imprisonment in "Puntland". The memorandum of understanding provides for transfers to be considered on a case-by-case basis; that is, it requires requests to be made by Seychelles in respect of each proposed transfer of a convicted person and consent by the "Puntland" authorities. The consent of the person proposed for transfer is also required. In the event of a transfer, "Puntland" is required to continue to enforce the sentence as if it had been imposed in "Puntland". The transferred person must be treated in accordance with applicable international human rights obligations, and Seychelles has the right to monitor that those obligations are complied with. The necessary next steps include the adoption of the legislation necessary in "Puntland"[14] to receive transferred prisoners and the completion of construction of appropriate prison facilities at Garoowe in 2013.

"Somaliland"

Legal framework

25. "Somaliland" also has a hybrid common and civil law system. Piracy offences are not explicitly covered in either the penal code or the code of criminal procedure. Article 486 of the Penal Code is usually applied to acts of piracy, which is the offence of "detention of a person for the purpose of robbery or extortion". UNODC and UNDP have assisted the Law Reform Group to draft a specific piracy law, which is in the process of amendment and will soon be presented to the "Somaliland" parliament for approval.[15] The "Somaliland" courts exercise jurisdiction exclusively in respect of offences for which there is a connection with "Somaliland". This includes, for example, offences committed on the territory of "Somaliland" and offences where the perpetrators are from "Somaliland".

Current capacity, international assistance received and further assistance needed for a specialized anti-piracy court

26. "Somaliland" courts have heard about 16 piracy trials involving around 97 suspects. The challenges that the proceedings have faced include delays, lack of defence counsel, the lack of formal legal training of judges and other legal professionals, lack of secure and properly equipped courtrooms, and other infrastructure and resource issues. There have been concerns about bribery, and this is being tackled through a code of conduct, approved by the "Somaliland" High Judicial Council, that will apply to the judiciary and the prosecution service. The courts and prosecution services in the coastal regions, mainly Erigavo and Berbera, have heard almost all of the piracy cases to date. UNDP assesses that the buildings, basic resources and infrastructure of the courts and prosecution offices in those areas are poor and that the proceedings face a number of challenges in meeting international standards of fairness. Although the security situation in "Somaliland" is less severe than in other areas of Somalia, security for prosecutors and judicial personnel involved in piracy cases is nevertheless a concern. Increasing the capacity of "Somaliland" prosecutors and courts to conduct piracy cases would increase the

[14] The Chairman's conclusions of the meeting of Working Group 2 of the Contact Group held on 11 and 12 October 2011 underlined the urgent need for Somalia to pass the necessary legislation, and supported the UNODC plan to revitalize the work of the Law Reform Group.

[15] The "Somaliland" authorities have undertaken to have the law in place within six months. Revision of the penal code and the code of criminal procedure will also be needed.

threat, and there would be a need to enhance protection for such personnel along similar lines to that required in "Puntland".

Investigations

27. There are approximately 67 officers assigned as chief investigators in the Criminal Investigation Division at key locations around "Somaliland" who investigate serious crimes, including piracy, and present evidence in court. They face severe challenges, including a low level of basic investigation skills, and the lack of established operational procedures, infrastructure, transport, and search or forensic equipment. UNDP has provided specific counter-piracy training to 100 police officers, including on investigations, operational procedures and basic forensic skills. Further police mentorship and advice will be provided over the next 20 months through international and national UNDP civilian police staff.

28. UNDP is planning construction of a new police headquarters in Hargeysa, and model police stations in other regional centres. UNDP has provided assistance in the development of a police act, which is to be presented to parliament in the first quarter of 2012, and will be followed up with development of regulations and a code of conduct. UNDP is providing support to the Special Protection Unit in "Somaliland", which provides protection to international agencies. Further Criminal Investigation Division training and mentoring will include investigative skills, and will aim to establish a specialized counter-piracy unit. Criminal Investigation Division offices will be rehabilitated and equipped. UNDP is assisting in the establishment of a national crime directorate and a criminal records management system. Specific support for capacity-building of the maritime police will also be provided. UNDP estimates that, with the above assistance, the "Somaliland" police will have the capacity to investigate piracy cases effectively within 20 months.

Prosecution

29. There are currently 36 prosecutors serving the whole of the "Somaliland" criminal court system. UNDP has provided a nine-month foundation programme through Hargeysa University to key prosecution staff, who have also received training by international Criminal Investigation Division experts. UNDP has constructed regional prosecution offices in Hargeysa and Burao, and will also do so in Boromo and Berbera. Assistance has been given to recruit 10 new prosecutors, including 5 female prosecutors. UNDP considers that, within 20 months, this increase in prosecutors should enable up to 24 piracy prosecutions per year to be conducted effectively.

Courts, including legal aid and representation

30. The "Somaliland" court system comprises 65 courts, including 52 district courts, 6 regional courts, 6 appeals courts and the Supreme Court. Piracy trials are heard at first instance in the assize sections of the district and regional courts by a bench of three judges. Appeals go to the assize section of the appeal courts and can possibly go on to the Supreme Court. There are a total of 120 judges sitting in these courts. UNDP has funded legal representation for all of the piracy suspects in the 16 trials, constructed district and regional courts in Hargeysa and offices for the High Judicial Council, and established five mobile courts to travel to rural areas.

31. UNDP has been given funds through the Trust Fund to Support Initiatives of States Countering Piracy off the Coast of Somalia to implement a three-year piracy trials programme to assist the "Somaliland" authorities to conduct piracy trials in accordance with international standards. This includes the amendment of key laws and their translation into Somali, development of the capacity of the High Judicial Council, further training and mentoring of judges and support staff, and provision of essential equipment, including to hear evidence by video link. UNDP assesses that this programme will make it possible to conduct piracy trials in accordance with international standards within two years, with continued mentoring and monitoring for a further year thereafter.

Prisons

32. UNDP and UNODC assess that current prison capacity in "Somaliland" is not sufficient and faces challenges, including overcrowding, a lack of basic medical facilities, water and sanitation, and a lack of opportunities for rehabilitative study and exercise. Although UNDP and UNODC have recently completed construction of Hargeysa prison, it is fully occupied with domestic prisoners and has no capacity to receive those convicted of piracy in other jurisdictions. Now that "Somaliland" has confirmed its readiness to accept the transfer of Somali piracy prisoners into its prisons,[16] UNODC is revisiting its draft proposal for additional prison capacity with an ongoing monitoring capability. The preference of the "Somaliland" authorities is for increased accommodation at existing prisons, rather than a new prison. This would consist of 200 places each at Mandera and Berbera prisons, and a block of 100 beds at Gabiley prison (for juveniles). The proposed assistance includes training, mentoring and an independent monitoring regime. The two prison advisers seconded to UNODC by the Government of Norway will assist with this work.

Projected capacity, timeline and costs of a specialized anti-piracy court

33. The assistance described above would enable investigation and prosecution of piracy cases to be conducted effectively within 20 months and a maximum of 24 trials per year, with up to 10 defendants per trial, to be conducted in accordance with international standards in two years. Assistance to investigations would continue for a three-year period at a total cost of $1.05 million. Assistance to prosecution capacity would be provided for three years at a cost of approximately $2.6 million. Support to the courts would be for two years, with a further year thereafter of mentoring and monitoring, at a total cost of approximately $2.6 million. The additional prison accommodation of 500 spaces would take two years to complete, and would be likely to cost in the region of $6 million in total.

Transfers of suspects, evidence and prisoners

34. "Somaliland" does not have any agreements with naval States or organizations to receive piracy suspects for trial in its courts. In practice, such agreements will not be entered into until naval States are satisfied that trials in "Somaliland" are capable

[16] In a statement by the Minister of Foreign Affairs and International Cooperation on 11 December 2011, "Somaliland" declared itself ready to accept prisoners who come from Somalia under the terms of its agreement with Seychelles. It was also indicated in the statement that "Somaliland" would not accept prisoners who come from "Puntland", because "Puntland" is itself in receipt of assistance from the international community.

of meeting the human rights provisions that naval States and organizations include in such agreements. As "Somaliland's" jurisdiction is limited to cases that have a connection with "Somaliland", any future agreements with naval States for the transfer of suspects may be similarly limited.

35. "Somaliland" entered into a memorandum of understanding with Seychelles in April 2011, which follows the same framework as the agreement between the Transitional Federal Government of Somalia and Seychelles for the transfer of convicted pirates for imprisonment in "Somaliland". The memorandum of understanding provides for transfers to be considered on a case-by-case basis; that is, it requires requests to be made by Seychelles in respect of each proposed transfer of a convicted person and consent by the "Somaliland" authorities. The consent of the person to be transferred is also required. In the event of a transfer, "Somaliland" is required to continue to enforce the sentence as if it had been imposed in "Somaliland". The transferred person must be treated in accordance with applicable international human rights obligations, and the Seychelles has the right to monitor that those obligations are complied with.

36. In his report of 9 December 2011 (S/2011/759, para. 46) the Secretary-General reported that the counter-piracy work carried out in "Somaliland" by UNODC would come to an end early in 2012 following a decision of "Somaliland" to withdraw from the memorandum of understanding with Seychelles and the unexplained release of a large number of pirates from Hargeysa prison. UNODC is reconsidering that position in light of a statement issued by the "Somaliland" authorities on 11 December 2011 reconfirming their commitment to accept transfers of prisoners under the memorandum. The necessary next steps include the adoption of the legislation necessary in "Somaliland" to receive transferred prisoners and completion of construction of appropriate additional prison spaces over the next two years.

Brief review of the proposal for an extraterritorial Somali anti-piracy court

37. In his report, Jack Lang, Special Adviser to the Secretary-General on Legal Issues Related to Piracy off the Coast of Somalia, proposed the establishment of an extraterritorial Somali anti-piracy court in a third State in the region to act as a focal point for regional and international support to help strengthen the rule of law in Somalia, as a swift and inexpensive measure if located within the premises of the International Criminal Tribunal for Rwanda in Arusha, United Republic of Tanzania (see S/2011/30, annex). In his report of 15 June 2011 (S/2011/360), the Secretary-General identified the modalities for the establishment and effective functioning of such a court, which included: consideration of the views of the Somali authorities and of potential host States; the need for an appropriate criminal and procedural legislative framework for piracy prosecutions; the need for trained judges, prosecutors and other legal professionals; and the need for security and premises.

38. Consultations conducted both by the Office of Legal Affairs and by UNDP have indicated that the Somali authorities continue not to favour the establishment of a Somali court outside the territory of Somalia, preferring any assistance for new courts to be implemented within Somalia. Further, the challenges faced by Somalia in relation to the adequacy of the legislative basis for piracy prosecutions, and the level of training and qualifications of Somali judges and other legal professionals,

remain difficulties.[17] Security experts continue to advise that co-locating an extraterritorial Somali anti-piracy court with the International Criminal Tribunal for Rwanda in Arusha, as proposed by the Special Adviser, would increase dramatically the risks to the Tribunal and its staff. The advice of the Department of Safety and Security remains that stand-alone premises would need to be found. It remains difficult to comment authoritatively on the Special Adviser's estimated annual costs for an extraterritorial Somali court (S/2011/360, para. 91). The need for stand-alone premises, associated security costs, and the salaries and other expenses of international experts, including from the Somali diaspora, may impact on those estimates.

B. Seychelles

39. In view of the continuing challenges facing the establishment of an extraterritorial Somali anti piracy court at this stage, Working Group 2 of the Contact Group on Piracy off the Coast of Somalia has discussed the possibility of developing a regional prosecution centre, for example in the Seychelles. Consistent with the principles identified by the Special Adviser, the purpose of the centre would be to act as a focal point for regional and international support to the prosecution of piracy suspects and provide a location offering relative logistical ease for their transfer by naval forces. As the regional prosecution centre would be based in the national legal system of the Seychelles, it would enjoy the cost and speed of establishment advantages identified as important considerations by the Special Adviser.

40. The Government of Seychelles has indicated its willingness to host such a regional prosecution centre, contingent upon there being an effective post-trial transfer framework in place for the return of those convicted to Somalia. During 2012, Seychelles will open the Regional Anti-Piracy Prosecution and Intelligence Coordination Centre, under the auspices of the Indian Ocean Commission. The Centre will seek to develop the expertise to track piracy finances and develop cases capable of prosecution in Seychelles or elsewhere. The design of the facility is complete, and construction, supported by the United Kingdom of Great Britain and Northern Ireland, is expected to begin in the first quarter of 2012. A number of States and international agencies have indicated that they may commit resources and staff to the Centre.

Legal framework

41. Seychelles has a common law legal system. Section 65 of the Penal Code, as revised with assistance from UNODC in March 2010, covers the offence of piracy and reflects the definition and jurisdiction over piracy offences set out in articles 101 to 107 of the United Nations Convention on the Law of the Sea, read in conjunction with article 58(2).[18] The revised provision has been the basis of the offence charged in six of the seven cases that have led to convictions in Seychelles to date. It allows prosecution for the full range of offences, including attempt,

[17] Although these may be alleviated to some extent through the recruitment of experts from the Somali diaspora to mentor and advise.

[18] Article 58(2) clarifies that the definition of piracy set out in article 101 and universal jurisdiction over piracy as set out in article 105 apply in the exclusive economic zones of States.

incitement and conspiracy. The law thus allows, in the assessment of the Attorney General of Seychelles, for the investigation and prosecution of foreign nationals involved in the financing, planning or organizing of piracy. Such prosecutions would be dependent on extradition of the suspects to Seychelles.[19] The provisions of the Seychelles Criminal Procedure Code have proved suitable to support piracy prosecutions, and do not need amendment.

Current capacity, international assistance received and further international assistance needed for a specialized anti-piracy court

42. The Supreme Court of Seychelles is the highest trial court in Seychelles and the court of first instance for serious criminal cases, including piracy trials. Appeals would be heard by the Seychelles Court of Appeal, but there have been no appeals against piracy convictions to date. Seychelles has prosecuted eight piracy cases over the last two years. One case was withdrawn for lack of evidence, and the suspects were repatriated to Somalia, while seven cases resulted in convictions. The main challenge for Seychelles is the small size and resources of its judiciary, rather than any difficulty in conducting trials in accordance with international standards.

Investigations

43. Investigations of acts of piracy are carried out by the Seychelles police force and the Seychelles coastguard. There are a total of 35 investigators for the whole country, of which 5 have been selected to deal with serious crimes, including piracy. The police have received training and mentoring by UNODC and the International Criminal Police Organization (INTERPOL), and the coastguard has received training from UNODC and the European Union Naval Force Somalia (EU NAVFOR). UNODC maintains a full-time police training coordinator and a Central Investigation Division mentor in Seychelles who are assisting the police to improve management and to develop investigation skills, statement taking, operational procedures, forensic skills, case management and trial support. UNODC uses police officers loaned by the Governments of Australia and the Netherlands to provide specialist training, and the Mauritius police have seconded an investigator to provide further capacity. A further 12 investigators trained by the Criminal Investigation Division are needed to increase capacity, and additional international support is required to provide logistical assistance to the police, in particular to increase forensic capacity.

Prosecution

44. The Seychelles Attorney General's Office has six Seychellois prosecutors, one of whom (the Attorney General himself) has prosecuted one of the eight piracy cases to date, and two prosecutors seconded by the United Kingdom who have prosecuted the remaining seven cases.[20] UNODC has provided training in the law of the sea, guidance on the handover of suspects and evidence, funding to support the two United Kingdom prosecutors, legal and information technology resources and office equipment, and support for travel and training of prosecutors. UNODC will continue to provide this support. No additional international assistance is required if the

[19] Rather than transfer from a naval vessel under the agreement with the European Union.

[20] The United Kingdom prosecutors prosecute other serious crimes when there are no piracy trials.

United Kingdom, or another Commonwealth country, continues to provide two prosecutors.

Courts, legal aid and representation

45. There are six Supreme Court judges, including the Chief Justice, none of whom are assigned exclusively to piracy trials. There is a backlog of approximately two years of both criminal and civil cases before the Supreme Court, but the judiciary has given priority to processing piracy cases. The seven piracy cases tried to date have taken an average of seven months from the time of arrest to judgment. All piracy suspects are afforded legal representation by Seychelles Legal Aid, which is refunded to the Government by UNODC using, in part, funds from the Trust Fund to Support Initiatives of States Countering Piracy off the Coast of Somalia. UNODC has reviewed piracy legislation and will continue to provide judicial training, legal resources and office equipment, transcription services, travel for foreign witnesses to testify in piracy trials, defence costs and court interpreters.

46. Subject to the approval of funding from the Trust Fund, UNODC will construct a courtroom dedicated primarily to piracy cases. While the Government supports the need for a new courtroom for this purpose, it is not favourable to the establishment under the law of a new court with jurisdiction limited exclusively to piracy. The Government has determined that no advantage would be gained by constraining court space and court staff exclusively to piracy trials, and that it would be wasteful during any lulls in the number of piracy suspects arrested or transferred to Seychelles. Seychelles has received only two requests for the transfer of piracy suspects in the last year.

47. Given the small size and limited resources of the Seychelles judiciary, UNODC assesses that additional Supreme Court judges would be required for a specialized anti-piracy court, and they would need to be recruited internationally. Seychellois law and practice allows judges and lawyers from other Commonwealth jurisdictions to practice in Seychelles.[21] The Commonwealth Secretariat is therefore a natural interlocutor for this purpose, and has been approached by the Government with a view to initiating a recruitment process. The Government would be favourable to the assignment of Commonwealth judges primarily, but not exclusively, to piracy cases.

Prisons

48. Seychelles has one prison, with a maximum capacity of 420. It is full and currently holds 63 convicted pirates and 7 persons suspected of piracy. UNODC assesses that conditions in the main prison block suffer from a lack of therapeutic, rehabilitative and vocational opportunities, and that the building does not provide a fully safe and secure environment. Refurbishment is under way, funded in part by UNODC. The Secure Incarceration Unit, constructed by UNODC, provides an additional 60 prisoner spaces.

49. UNODC assesses that Seychelles has very limited capacity to accept any further piracy prisoners until prison renovation work is complete in late 2012. Further, the Government of Seychelles considers it a precondition for an increased

[21] The current Chief Justice and the Head Judge of the Supreme Court, Criminal Division, are both Ugandan judges. The Court of Appeal includes judges from Sri Lanka and Mauritius.

role in piracy prosecutions that there be a functional repatriation option for convicted pirates to be transferred to Somalia. If the prisoner transfer arrangements with "Puntland" and "Somaliland" become effective in practice, and when the prison building work in Somalia is complete, Seychelles would have physical capacity to hold more suspected and convicted pirates.

Potential capacity, timeline and costs of a specialized anti-piracy court

50. UNODC estimates that the two internationally recruited prosecutors and two additional Supreme Court judges could increase the number of cases heard per year to a maximum of 24. The addition of an extra courtroom for the Supreme Court, increasing the number of courtrooms to three, would raise the capacity to hold trials to a maximum of 48 cases per year. However, in practice, this maximum number would be limited by the availability of prison spaces to hold suspects on remand. UNODC estimates that, subject to prisoner transfer arrangements with Somalia becoming effective, the Seychelles prison could hold up to 100 piracy suspects at a time. This would allow approximately 15 to 20 cases per year, assuming an average seven-month stay in prison for each suspect.

51. UNODC estimates that, subject to funding availability, the additional assistance for all four areas set out above could be provided within 12 months. This would include the construction of a new secure courtroom for the Supreme Court,[22] and recruitment of the necessary additional judges and administrative staff. The cost of increasing the capacity to conduct investigations consists of a $120,000 one-off cost for a secure exhibit room and $500,000 in annual costs. The $500,000 in annual costs breaks down as follows: $150,000 for training; $80,000 for forensic support; $50,000 for information technology equipment; $20,000 consumable stores, such as evidence-handling equipment; $140,000 for the training coordinator mentor; and $60,000 for logistics. Approximately 30 per cent of the annual costs for 2012 are already funded by UNODC.

52. The most feasible options for the funding of two additional Supreme Court judges would be either: (a) recruitment from Commonwealth countries where candidates would find the Seychelles salary attractive, in which case the $3,800 per month costs of each post would be reimbursed to the Government by UNODC; or (b) recruitment from Commonwealth countries where candidates would not find the Seychelles salary attractive, in which case, the most workable solution would be provision gratis by the sending Government.

53. The cost of defence lawyers would amount to approximately $7,700 per case, which would be provided by UNODC through the legal aid fund of Seychelles. Two locally recruited court administration staff would cost $12,000 per annum each. Transcription costs for 24 trials would be $80,000. Interpretation costs for 24 trials would be, at most, $200,000, allowing for 2 trials running simultaneously, each with two interpreters. Witness travel costs for 24 trials would be $120,000.

54. The building work and other improvements at the Seychelles prison would take 12 months, and costs are estimated at $500,000, of which UNODC has already received half. The annual costs of providing transport to and from court, additional medical resources for prisoners, and therapeutic, rehabilitative and vocational opportunities at the prison, would be in the region of $250,000.

[22] Depending on an outstanding decision to be taken by the Board of the Trust Fund.

Transfers of suspects, evidence and those convicted

55. The Government of Seychelles has entered into arrangements with the European Union, the United States, the United Kingdom and Denmark to accept suspected pirates for prosecution. There have been eight piracy cases to date. Twenty-nine suspected pirates, in three of the cases, were transferred to Seychelles by naval States. The remaining 41 suspects were arrested by Seychelles authorities. In practice, the handover of suspects from warships to the Seychelles authorities has been straightforward. The terms of these arrangements vary a little, but generally concern the respective rights and responsibilities of the naval State and Seychelles, the treatment, prosecution and trial of the suspect in accordance with international human rights standards, and a requirement that the naval State give its consent before the suspect is transferred either for trial or imprisonment in a third State.

56. UNODC has assisted Seychelles authorities to draft guidance on the procedural and evidential requirements for piracy prosecutions. That guidance is the basis upon which naval forces transfer evidence to the Seychelles police force. The transfer arrangements are straightforward, and consist of a single policeman being assigned to receive the transfer of evidence, which is carried out manually. Initial problems associated with the gathering of evidence by naval forces and its transfer to the regional prosecuting States, in particular Kenya and Seychelles, have been overcome through the use of the guidance.[23]

57. The Government of Seychelles has entered into an agreement with the Transitional Federal Government, and memorandums of understanding with the authorities of "Puntland" and "Somaliland", for the transfer of convicted persons to prisons in "Puntland" and "Somaliland". As set out in the section above concerning Somalia, each proposed transfer under these arrangements requires a request to be made by the Seychelles authorities and the agreement of the relevant Somali authorities. Concerns have been raised[24] about the lack of any such transfers to date, and the release of a large number of piracy prisoners in "Somaliland". In a recent statement, the "Somaliland" authorities reconfirmed their commitment to receiving transfers of convicted pirates under the memorandum of understanding with Seychelles (see para. 36 above). To become effective, these arrangements also require the completion of construction of suitable prison spaces in "Puntland" and "Somaliland".

C. Kenya

Legal framework

58. Kenya has a common law legal system. Section 371 of the Merchant Shipping Act 2009, read in conjunction with section 369, covers the offence of piracy and armed robbery, and was drafted with assistance from UNODC. It reflects the definition and jurisdiction over piracy offences set out in article 101 of the United Nations Convention on the Law of the Sea, read in conjunction with article 58(2), and incorporates offences such as hijacking, as contained in the Convention for the

[23] See the broader discussion of evidentiary matters, including the issue of the attendance of witnesses, and possible use of evidence by video link, in the report of the Secretary-General of 15 June 2011 (S/2011/360).

[24] During discussions in Working Group 2 of the Contact Group.

Suppression of Unlawful Acts against the Safety of Maritime Navigation. This legislation is the basis for charges in five cases currently before the Kenyan courts. It includes the offences of inciting or intentionally facilitating an act of piracy. It does not prevent an individual from being charged with attempting or conspiring to commit, aiding or abetting, counselling or procuring an act of piracy. UNODC, in cooperation with the Director of Public Prosecutions of Kenya, has proposed amendments to the Merchant Shipping Act which would expand the law to include those offences. The proposed amendments are currently under consideration by the Kenyan authorities.

59. The Merchant Shipping Act 2009 repealed the piracy provisions under section 69 of the Penal Code 1963. The repealed provisions are the basis for charges in five older piracy cases that are ongoing before the Kenyan courts. A High Court decision in November 2010 held that Kenyan courts do not have jurisdiction to hear piracy offences under that section, and all five older cases are therefore awaiting appeal.

60. Kenya's jurisdiction over piracy offences extends to acts committed anywhere on the high seas, and does not require a connection to Kenya, such as the nationality of the ship attacked, the perpetrators or the crew. The provisions of the Criminal Procedure Code of Kenya have proved adequate to support piracy trials and have not needed amendment. Naval forces transferring suspects to Kenya have for some time requested provision to allow naval witnesses to give their evidence by video link. A recent decision by the Magistrates Court suggests that civilian witnesses can give evidence by video link in cases where they are afraid to appear in person. This procedure will be followed for the first time in January 2012, with UNODC equipment linking a witness in Iran to the court in Mombasa.

Current capacity, assistance received and further assistance necessary for a specialized anti-piracy court

61. Kenya has been requested and agreed to accept one transfer case involving 24 suspects in the last 12 months. Seven piracy cases have been prosecuted over three years, resulting in one acquittal (of 17 suspects) and six convictions (of a total of 50 pirates). Another 10 cases (involving 93 suspects) are being prosecuted.

Investigations

62. Investigations by the Kenya police are carried out by the Criminal Investigation Division in Mombasa, and, although there is no designated counter-piracy team, the investigations are in practice carried out by the same two or three officers each time. While there are some investigative skill challenges, no piracy case thus far has failed owing to the quality of police work. Extensive support, training and mentoring has been provided by EU NAVFOR, UNODC, INTERPOL and bilateral donors, including Germany, the United States and the United Kingdom. UNODC assistance to the police has included training, mentoring and construction, including of a secure evidence room. Mentoring has focused on investigation skills, file preparation and review of piracy files for use in court.

63. The Mombasa Criminal Investigation Division would welcome the placement of a permanent international police adviser in Mombasa, and UNODC has identified a candidate who could be in post by 1 March 2012. The Division's offices in Mombasa need refurbishment to provide a modern, well-equipped environment for effective investigations. Further investigations training is required in interviewing,

statement taking and investigative technologies. The armoury in Mombasa is in a state of disrepair, and requires rebuilding to hold weapons sufficient for security for an increased number of cases.

Prosecution

64. The Director of Public Prosecutions of Kenya has prosecuted seven piracy cases over three years. Seven prosecutors out of a total of 70 are assigned to piracy cases, but they also carry out other prosecutions. UNODC has provided training in law of the sea and naval operations, equipped the offices of the Director of Public Prosecutions in Nairobi and Mombasa, provided an office car and funded travel for prosecutors to attend court and meetings of Working Group 2 of the Contact Group.

65. UNODC will be providing further training, and will be meeting travel costs and equipping the Mombasa prosecution office. Additional prosecutors will be required in Mombasa in order to increase the number of piracy cases that can be prosecuted. They could be recruited either nationally or internationally. Although consideration could be given to assigning additional prosecutors exclusively to piracy cases, this would raise questions in a jurisdiction where there are some challenges regarding delays in the hearing of criminal trials.[25] While the law in Kenya[26] allows the Chief Justice to admit as advocates legal practitioners that are entitled to appear before the superior courts of Commonwealth countries, the law also requires such advocates to appear with a Kenyan advocate, and they are prohibited from signing or filing pleadings in court. There is a practice of foreign advocates appearing in the Kenyan courts, but consultations suggest that this may be permitted only if a specific need for foreign advocates is demonstrated.

Courts, legal aid and representation

66. The Magistrates Court in Mombasa is the court of first instance for piracy cases. Appeals are heard by the High Court in Mombasa, and they can go on to the Court of Appeal in Nairobi. Ten magistrates are assigned to hear piracy trials, but not exclusively piracy trials. UNODC has constructed a secure courtroom adjacent to Shimo La Tewa prison, 12 km north of Mombasa, where most of the suspected pirates are held on remand.

67. Kenya has prioritized piracy cases in the trial schedules before its courts, and there are 10 cases currently ongoing. The seven completed piracy cases have taken an average of 17 months from arrest to judgement. All piracy suspects are afforded legal representation on request through a Kenyan non-governmental organization, funded by UNODC. UNODC assesses that trials are conducted in accordance with international standards.[27] UNODC further assesses that there is unlikely to be support for the creation of new courts with jurisdiction exclusive to piracy, as it is not apparent that there would be an advantage to be gained by constraining court space and staff to piracy trials at times when there may be insufficient trials to fully occupy them.

68. If there were to be an increase in the number of piracy cases, additional magistrates would be required in Mombasa to avoid causing further delays in

[25] Kenya has undertaken judicial and prosecutorial reforms aimed at reducing delays.

[26] Section 11 of the Advocates Act.

[27] The Chief Justice of Kenya acknowledges that there are challenges regarding delays in trials.

non-piracy cases. They could be recruited either nationally or internationally. Kenyan law allows for the recruitment of magistrates and high court judges from other Commonwealth or common law jurisdictions. There is a practice of such foreign judges sitting in Kenyan courts, but consultations suggest that a specific necessity for this in relation to piracy trials would need to be shown. An extra piracy caseload would also necessitate additional court administration staff, interpretation and court security and would involve costs for travel of foreign witnesses to testify.

Prisons

69. Somali suspects awaiting trial in Kenya are held at Shimo La Tewa prison, which holds approximately 100 piracy suspects. Kenyan prisons have around 50,000 prisoners incarcerated (43 per cent of them on remand) and capacity for around 22,000. Shimo La Tewa is itself 300 per cent over capacity. Any additional Somali piracy suspects would therefore exacerbate the situation. Solutions might include the construction of additional cells, or considering possible means to reduce the existing prison population, while ensuring that piracy suspects are not given special treatment, which would be inconsistent with the Government's efforts to transform the judicial, prosecution and prison system under the new Constitution.

70. Of the 93 prison establishments in Kenya, support has been provided, or is currently being provided, to 6 prisons that have been designated to accommodate Somali pirates and suspects, including Shimo La Tewa. UNODC has improved water storage, sanitation and food preparation facilities, and provided staff training and medical, recreational, educational and other equipment. An additional piracy caseload may require only a modest number of additional prison cells, or the need for prison space may be met through a reduction in the existing prison population, subject to the important caveat referred to above.

Projected capacity, timeline and costs of a specialized anti-piracy court

71. If the number of officers handling piracy investigations were increased to five, and assistance provided as set out above, it is estimated that Kenya police could investigate up to 24 piracy cases per year. Provision of an additional eight prosecutors, with paralegal support, would be needed to prosecute that number of cases per year. An additional two magistrates could handle a maximum of 12 cases in 12 months each, or 24 cases per year. If sufficient magistrates and court staff were available, the single courtroom built by UNODC adjacent to Shimo La Tewa prison would be capable of handling a maximum of 12 cases per year. The remaining 12 additional cases would therefore need to be heard in the main courtroom in Mombasa.

72. It is estimated that up to 200 prison spaces could be made available every six months if it were possible to reduce remand and convicted prisoner populations as referred to above. This would likely be sufficient to enable the additional 24 trials to take place. Kenya does not have a prisoner transfer agreement with Somalia, and, if that remains the case, the capacity to achieve a maximum of 24 cases per year would be dependent on making national prison places available.

73. Increasing the capacity of investigations, as set out above, would take about 12 months. Construction costs would be: the new armoury ($160,000) and a purpose built Criminal Investigation Division office (which is likely to cost $400,000). UNODC currently has no funding for these activities. Annual costs would consist of

mentoring ($160,000) and training of investigators ($100,000). UNODC currently has funding for approximately 25 per cent of these activities. INTERPOL also has some funding to assist.

74. With financing in place, and subject to the agreement of the Kenyan authorities, it would take a minimum of six months to recruit the additional domestic or international prosecutors and make them operational. Paralegals could be recruited in around three months. Eight national prosecutors paid $500 per month would each cost $48,000 per annum (including training). Internationally recruited prosecutors/advisers would be likely to cost around $160,000 each per annum (including travel and training). Four local paralegals would be sufficient, paid at $250 per month, resulting in a total annual cost of $12,000. Annual training and logistical support would be in the region of $150,000.

75. With adequate funding and the agreement of the Kenyan authorities, it would take approximately one year to recruit the necessary additional magistrates and court administration staff. The most workable options for the funding of magistrates would be: (a) recruitment nationally or from Commonwealth or common law countries where candidates would find the Kenyan salary attractive, in which event, UNODC would reimburse the $1,400 per month for each magistrate to the Government; or (b) recruitment from Commonwealth or common law countries where candidates may not find the Kenyan salary attractive, in which case, the most workable solution would be for the judges to be provided gratis by their home country.

76. Increasing the provision of UNODC funding to a Kenyan legal aid non-governmental organization for defence representation would cost $5,000 per case, totalling $120,000 per annum. Logistical support, including interpretation, witness travel to court and training averages $20,000 per case, totalling, at the most, $480,000 per annum.

77. Routine training and logistical support to the prisons is in place. The recruitment of staff to assist in reducing the prison population would take six months. There would be a one-off cost of the construction of a fully equipped 15-bed crisis care unit at Shimo La Tewa of approximately $250,000. Annual costs would be: logistical, medical and training support to the six Kenyan prisons (around $500,000); staffing and operating costs for the crisis care unit ($40,000); and the possible programmes to help reduce remand and convicted prisoner populations (around $200,000).

Transfers of suspects, evidence and prisoners

78. In 2009, the Government of Kenya signed agreements with the European Union, the United States, the United Kingdom, Canada, China and Denmark, to accept suspected pirates for prosecution. The Government of Kenya withdrew from those agreements in March 2010, but continues to accept piracy suspects for prosecution on a case-by-case basis and to apply the provisions of the former agreements for such transfers. Forty-four suspects have been accepted on that basis. The agreements vary a little, but they generally contain provisions concerning the respective rights and responsibilities of the naval State and Kenya, the treatment, prosecution and trial of the suspect in accordance with international human rights standards, a prohibition of the application of the death penalty, and a requirement that the naval State give its consent before the suspect is transferred either for trial or imprisonment in a third State.

79. Handovers of suspects from warships to the Kenya police, supported by UNODC police advisers and the EU NAVFOR liaison officer in Mombasa, have been straightforward and have not given rise to legal difficulties. Kenya has accepted the one case it was requested to receive in the last 12 months, but UNODC considers that renewal of the various agreements may increase certainty for the naval States of being able to transfer suspects.

80. To assist naval States in gathering evidence for transfer to Kenya, UNODC, EU NAVFOR and the Combined Maritime Forces worked with the Kenyan authorities to draft guidelines on their procedural and evidential requirements. The guidance note was published in July 2009, and has been successfully used by naval States. Transfers of evidence have proved straightforward and have not led to difficulties before the Kenyan courts. The Secretary-General understands that Kenya has not to date approached the Somali authorities with a view to negotiating prisoner transfer agreements.

D. Mauritius

Legal framework

81. During consultations, the Government emphasized that it had adopted a set of measures to effectively combat the spread of piracy in the Indian Ocean.[28] Mauritius criminal law derives from both common and civil law systems. On 13 December 2011, the Mauritius parliament adopted the Piracy and Maritime Violence Act, which is expected to come into force in January 2012. It reflects the definition of and jurisdiction over piracy, as set out in articles 101 and 105 of the United Nations Convention on the Law of the Sea, read in conjunction with article 58(2). Section 3 of the Act defines piracy and the offences of inciting or intentionally facilitating acts of piracy. These provisions could potentially allow for the investigation and prosecution of foreign nationals involved in organizing or financing piracy. Such prosecutions would be dependent on the home State extraditing the suspects to Mauritius.[29] The Act specifically provides for the transfer of suspects by the European Union or States for prosecution, for the possibility of witnesses statements to be admitted in evidence in the absence of the witness and for the transfer of convicted persons. UNODC considers that the rules of procedure and evidence set out in the Criminal Procedure Act are a suitable basis on which to prosecute piracy offences.

Current capacity, international assistance provided and further international assistance needed for a specialized anti-piracy court

82. On 14 July 2011, Mauritius entered into an agreement with the European Union defining the conditions and modalities for the transfer of suspected pirates and any seized property. No transfers have yet taken place, and no piracy trials have yet been conducted in Mauritius, pending completion of guidelines for the transfer

[28] At the regional level, Mauritius hosted the Second Regional Ministerial Conference on Piracy in October 2010, in which a regional strategy and a regional plan of action were adopted, to be implemented over 15 years at a cost of €25 million. Mauritius will also second a representative to work in the Regional Anti-Piracy Prosecution and Intelligence Coordination Centre to be opened in Seychelles.

[29] Rather than under transfer arrangements for suspected pirates apprehended at sea by naval forces.

of suspects being developed with the assistance of UNODC. Until the laws and procedures of Mauritius have been tested through transfers of suspects from naval forces, it is difficult to assess with certainty what additional assistance would be required for a specialized anti-piracy court. Nevertheless, UNODC considers that the joint European Union/UNODC programme set out below would provide the necessary capacity.

Investigations

83. UNODC assesses that the Mauritius police is a well-structured, resourced and managed organization. There are a total of 838 Criminal Investigation Division officers, including 320 in the Central Criminal Investigation Division in Port Louis. There are 20 Criminal Investigation Division officers in the anti-piracy unit. They have not yet been engaged in the investigation of piracy cases, apart from one investigator who has been seconded to the Seychelles police for six months to assist with their piracy investigations. Mauritius police investigators have been trained in the investigation of piracy cases, and have attended a number of UNODC regional exchanges to learn how piracy investigations have been carried out in other regional States. Mauritius criminal analysts took part in INTERPOL/UNODC training concerning the analysis of information obtained from convicted pirates.

84. A joint European Union/UNODC programme has been developed to provide support over an 18-month period. It envisages mentoring and training for the police and coastguard, an additional investigator to support piracy investigations, renovation of the police facilities at Port Louis and financial support for transportation, interviewing, custodial and other related costs. Interpretation and mentoring support would also likely be required for piracy investigations.

Prosecutions

85. The Director of Public Prosecutions of Mauritius has not carried out any piracy prosecutions to date, but has agreed to set up a dedicated unit of prosecutors to try piracy cases. UNODC has begun training and mentoring, as well as drafting guidelines for the handover of piracy suspects and evidence by naval States. It has also provided funding for prosecutors to attend meetings of Working Group 2 of the Contact Group on Piracy off the Coast of Somalia, and the shadowing of a United Kingdom prosecutor conducting piracy trials in Seychelles. Further financial support will include covering expenses for the attendance of foreign civilian witnesses at piracy trials and enhanced security arrangements in the Supreme Court.

86. Additional prosecutors would be required to handle the added caseload, but UNODC judges that Mauritius lawyers are trained to a high standard, and there would not be a need to recruit internationally. Two, or sometimes three, prosecutors are assigned to important criminal cases, and UNODC believes that a certain number of prosecutors could be assigned exclusively to handling piracy cases. Mauritius law allows for foreign law firms and lawyers to be registered and to work in Mauritius, and the Chief Justice has the discretion to allow foreign lawyers to take cases before the courts.

Courts, including legal aid and representation

87. Piracy cases would be heard before judges of the Supreme Court or before magistrates of the Intermediate Court. The Mauritius courts are well staffed and

managed, and UNODC assesses that trials are in accordance with international standards, although there is a significant backlog of cases, mostly civil, but also some criminal. UNODC assesses that Mauritius has perhaps the best developed criminal justice system in the region and would be well placed to deliver substantial prosecuting capability. The Government has stated that a new courtroom is required if piracy trials are to continue beyond the 18 months of the European Union/UNODC joint programme. The Government sees no advantage in establishing a new court with jurisdiction exclusive to piracy, which would constrain court space and court staff to piracy trials.

88. Support would be required for the recruitment of additional judges. UNODC assesses that Mauritius judges are of a high professional standard, and it would not be necessary to recruit internationally. Although participation by foreign judges would be compatible with the law, there is in practice no tradition of accepting foreign judges in the Mauritius courts. The extra caseload would probably necessitate additional court administration staff.

Prisons

89. The Mauritius prisons are generally overcrowded, but UNODC assesses that they otherwise meet international standards. Accommodation has been identified for up to 30 piracy suspects at Beau Bassin prison. The European Union and UNODC have agreed to fund and/or refurbish part of this prison to standards similar to those for Mauritian prisoners to make some derelict cells suitable for occupation by convicted Somali pirates. Training for 20 senior prison officers has been provided. The joint European Union/UNODC programme would enable improvements to the Beau Bassin prison, drafting work to harmonize the Prison Act, regulations, standing orders and international requirements under which the prisons operate, and further training for prison officers.

90. The Government of Mauritius has indicated a need for additional prison space to allow it to accept further piracy suspects. They have funding for this project, and at this stage are considering where best to locate the new prison facility. The funding may provide for up to 200 prison spaces. The additional prison capacity, along with continued training and management development support for prison officers, are likely to be prerequisites for accepting piracy cases for prosecution. However, given space constraints, and for humanitarian reasons, Mauritius is considering the possibility of negotiating agreements with the Somali authorities for the transfer of convicted pirates.

Projected capacity, timeline and costs of a specialized anti-piracy court

91. The joint European Union/UNODC programme will support six trials of up to 10 suspects in each trial, over the 18 months of the programme from 1 September 2011. A team of two prosecutors could accept up to 12 cases per annum. A single judge would be able to handle around 12 cases per year. The Chief Justice estimates that, with the new courtroom, two new judges and the necessary support described above, Mauritius could handle 24 cases per year. Once new prison capacity is available, there will be potential for up to 150 piracy suspects to be held. Although the capacity envisaged is 24 cases per year, it should be noted that after about 20 cases, depending on the number of accused per case, the new prison would be

full, and prosecutions could only continue on the basis of a functioning prisoner transfer arrangement with Somalia.

92. If Mauritius were willing to take on these piracy prosecutions, it is estimated that a programme of assistance for the police could be developed and implemented in 12 months. Investigative support, including logistics, is likely to cost no more than $200,000 per year. It would take approximately six months to recruit additional prosecutors. Prosecutors in Mauritius are paid approximately $2,000 per month, including benefits. Therefore, two prosecutors for 12 months would cost $48,000. Other logistical assistance, including training and travel, would cost no more than $100,000 per year.

93. It is estimated that a programme of assistance to the courts could be developed and implemented in approximately 12 months. It would take about 12 months to construct a courtroom and recruit the necessary judges and court staff. Judges are paid approximately $60,000 per year, including benefits. Court administration staff are paid approximately $7,200 per year, including benefits. The cost of legal aid for piracy cases in Mauritius is still under negotiation between the defence lawyers and the judiciary, but is likely to be between $6,000 and $10,000 per case. Transcription costs for 24 trials would cost approximately $66,500, and witness travel expenses approximately $116,500. Interpretation costs for 24 trials would be $300,000, allowing for two trials running simultaneously, each with two interpreters.

94. It is estimated that it would take 18 months to complete the new prison facility. The other support required could be provided within six months. Financing for construction of a new prison is already secured. It is estimated that other training and management development support would cost no more than $200,000 per annum. It is not known at this stage whether Mauritius would request assistance with staff and prison running costs.

95. In summary, total annual costs would amount to $1.4 million as follows: police ($200,000); four prosecutors ($96,000); logistical and training support ($100,000); two judges ($120,000); two administrative staff ($14,400); legal aid for 24 cases ($240,000); transcription ($66,400); witness travel ($116,500); interpretation allowing for two trials running simultaneously each with two interpreters ($300,000); prisons ($200,000).[30]

Transfer of suspects, evidence and prisoners

96. The Government of Mauritius has signed an agreement with the European Union to accept for prosecution persons suspected of committing piracy on the high seas off the territorial seas of Mauritius, Madagascar, the Comoros, Seychelles and Reunion Island. The Government interprets this as being limited to their exclusive economic zones. This agreement therefore does not cover the principal pirate operating areas, and ideally would be expanded to cover a greater geographical area. It is important to note that Mauritius is distant from the areas of the ocean most heavily affected by piracy. Transferring suspects by naval ship may therefore delay their initial appearance in court, and could reduce naval resources in the area of naval operations. Transferring suspects by air via a State closer to the area of naval operations would require an agreement between Mauritius and the transiting

[30] These figures assume that Mauritius would cover police and prison staff costs.

State(s), and would require logistical, and possibly financial, support. It would take at least six months to negotiate the necessary agreement(s).

97. UNODC has assisted the Mauritius police to establish guidance for the transfer of evidence, and experience of similar guidance in Kenya and Seychelles suggests that transfers of evidence to Mauritius would be straightforward. Mauritius is considering the possibility of negotiating agreements with the Somali authorities for the transfer of convicted pirates. The Chairman of Working Group 2 of the Contact Group is assisting in this process.

E. United Republic of Tanzania

Legal framework

98. The United Republic of Tanzania has a common law legal system and has two pieces of legislation establishing piracy as a criminal offence: the Penal Code 1945 and the Merchant Shipping Act 2003. The Penal Code was amended in May 2010 to reflect the definition of, and jurisdiction over, piracy set out in article 101 and article 105 of the United Nations Convention on the Law of the Sea, read in conjunction with article 58(2). Section 66 of the Penal Code defines piracy and provides for the inchoate offences of inciting or intentionally facilitating an act of piracy. It sets a maximum penalty of life imprisonment. Sections 22 and 23 of the Penal Code also provide for the offences of enabling or aiding, aiding or abetting, counselling or procuring joint offenders in the prosecution of a common purpose and acts of omission, but not attempt to commit an offence.

99. Section 66 of the Penal Code specifically contemplates the possibility of prosecuting suspected pirates arrested by foreign navies, specifying that a special arrangement between the arresting State or agency and the United Republic of Tanzania is necessary where the pirate ship is not registered in the United Republic of Tanzania.[31] Any such agreement would need to take into consideration whether the accused persons are suspected of murder, in addition to piracy, as murder carries the death penalty in the United Republic of Tanzania.

100. Section 341 of the Merchant Shipping Act also prohibits piracy. It was amended in May 2010 to criminalize acts of piracy. It also reflects the definition of, and jurisdiction over, piracy offences set out in article 101 and article 105 of the Convention, read in conjunction with article 58(2). Section 341 defines piracy and provides for the offences of inciting or intentionally facilitating an act of piracy. Both the Penal Code and Merchant Shipping Act provide for the offence of inciting or intentionally facilitating acts of piracy. In addition, as mentioned above the Penal Code provides for the offences of enabling or aiding, aiding or abetting, counselling or procuring joint offenders in prosecution of a common purpose and acts of omission, but not attempt to commit an offence. Prosecutions for these offences would be dependent on the law of the extraditing State, as well as that of the United Republic of Tanzania.

[31] These amendments were made under the Written Laws (Miscellaneous Amendments) (No. 2) Act, 2010, 20 April 2010.

101. Procedure and evidence are dealt with in the Criminal Procedure Act 1985 and the Evidence Act 1967. UNODC considers that the rules of procedure and evidence should be a satisfactory basis on which to conduct piracy prosecutions.

Current capacity, international assistance provided and further international assistance needed for a specialized anti-piracy court

102. The United Republic of Tanzania has not yet conducted any piracy prosecutions. At the moment there are two pending cases, which are at the investigation stage. Until the laws and procedures of the United Republic of Tanzania have been tested through trials of piracy cases, it will be difficult to assess the kind of international assistance that would be required for a specialized anti-piracy court. The Government is actively engaged with the European Union in the negotiation of an agreement for the transfer of suspected pirates for prosecution. In the event of conclusion of that agreement, UNODC will deliver the joint European Union/UNODC programme of assistance set out below, and considers that this would provide the necessary capacity for a specialized anti-piracy court.

Investigations

103. Tanzanian police officers have taken part in counter-piracy training, including UNODC training in Mombasa, the INTERPOL/UNODC training programme for the analysis of information received from convicted pirates, and counter-piracy training organized by the United States in Mombasa, Kenya.

104. A joint European Union/UNODC programme of assistance to the United Republic of Tanzania with both short-term (up to 18 months) and medium-term (18 months to three years) elements has been proposed and the Government is considering it. It will be implemented if and when an agreement is concluded between the United Republic of Tanzania and the European Union for the transfer of piracy suspects. The short-term programme envisages a package of training and mentoring for the police and coastguard in investigative techniques, evidence handling and the conduct of complex investigations. UNODC would also refurbish the central police station and detention cells, enhance the police forensic scenes of crime unit facility and provide essential investigative equipment.

Prosecution

105. There are 305 prosecutors in the United Republic of Tanzania, including 32 senior attorneys, who have been organized in five specialized units. At the moment, the unit that would be responsible for prosecuting piracy cases has 10 senior attorneys. Tanzanian prosecutors have attended a number of UNODC training courses and are familiar with the experiences of other regional States engaged in piracy prosecutions. The short-term European Union/UNODC programme envisages a package of training and mentoring for prosecutors, participation in conferences and meetings of Working Group 2 of the Contact Group on Piracy off the Coast of Somalia, support for the drafting of evidence handover guidance, and provision of library and other essential resources.

Courts, including legal aid and defence representation

106. The Tanzanian High Court comprises 61 judges in 13 locations. Dar es Salaam and Tanga would be the most appropriate locations for hearing piracy cases, given

their port facilities and high security prisons. UNODC assesses that, although the judges are of a high professional standard, they would be likely to benefit from training in law of the sea, and piracy trials specifically. The High Court has a large backlog of cases, which could take two to five years to complete. The judiciary is trying to streamline procedures to reduce these delays. The Registry in Dar es Salaam has begun reviewing and reforming the case management systems, including with the assistance of an internationally recruited legal adviser. A few Tanzanian judges have attended UNODC regional exchanges and are familiar with the issues associated with piracy trials.

107. The short-term European Union/UNODC programme envisages training and mentoring support to the judiciary, specialized training in the law of the sea and cross-border investigations, attendance at conferences and courses, support for the cost of travel for foreign witnesses to testify in piracy trials, provision of legal representation for suspects at trials, provision of interpretation and transcription services for piracy trials, improvement of the High Court facilities and infrastructure, including the prisoner holding capacity and storage area for exhibits, provision of secure docks in the Supreme Court, and procurement of additional court security services, essential legal resources and materials, as well as video link technology.

Prisons

108. The United Republic of Tanzania has 38,000 prisoners in a system designed for fewer than 30,000. The prison service has identified a 72-space discrete unit at the Ukonga Prison in Dar es Salaam which could be remodelled for use as accommodation for Somali piracy suspects. UNODC anticipates that, for the United Republic of Tanzania to be prepared to play a role in piracy prosecutions, they would either seek assistance to create additional prison spaces or assistance to reduce their current prisoner population, or both. Two Tanzanian senior prison officers have attended UNODC regional learning exchanges and are familiar with the issues associated with the custody of Somali piracy suspects.

109. Based on the assumption that Ukonga Prison would be used, the short-term European Union/UNODC programme envisages refurbishment and rehabilitation of prison cells, training of prison staff, provision of essential equipment, including medical supplies and recreational resources, provision of material for prisoner clothing, purchase of plates, cups, serving utensils, bedding, blankets and mattresses, provision of vehicles for prison management and transport of inmates from prison to court and provision of radio communications equipment and humane restraints.

Projected capacity, timeline and costs of a specialized anti-piracy court

110. The joint European Union/UNODC programme would provide capacity to hear five piracy cases per year. The international assistance set out in the short-term joint European Union/UNODC programme would be delivered over an 18-month period, and the long-term programme over three years. The estimated total cost is approximately $2 million. The commencement of the programme will be dependent on consideration by the United Republic of Tanzania of the programme proposal and a decision whether to enter into a transfer agreement with the European Union.

Transfers of suspects, evidence and those convicted

111. The United Republic of Tanzania has no existing arrangements to receive piracy suspects and evidence from naval States, nor does it have prisoner transfer arrangements with Somalia. However, arrangements to receive suspects and evidence could be put in place without difficulty or delay. The Government is engaged in negotiation of a transfer agreement with the European Union and is considering the joint European Union/UNODC proposal.

IV. Detailed implementation proposals

112. The first step before planning the caseload capacities of specialized anti-piracy courts in the region and a regional prosecution centre would be to assess, with the assistance of the naval coalitions and other naval States active in the repression of piracy off the coast of Somalia, the anticipated number of piracy suspects that are likely to be transferred to States in the region. Projects to increase the capacities of regional jurisdictions should be matched to the anticipated workload. A second important preliminary step is to ensure that work is funded and under way to increase prison capacity, primarily in "Puntland" and "Somaliland", but also in the regional States. Otherwise, the lack of sufficient prison space for piracy suspects on remand and convicted pirates may restrict the caseload capacity of the specialized anti-piracy courts that are the subject of this report.

113. Subject to the above considerations, the suggested detailed implementation proposals for the specialized anti-piracy courts are set out below in two sections — measures of a general nature, and a country-by-country list of specific implementation steps.

A. Measures of a general nature

114. Measures of a more general nature to be considered by the Security Council, UNDP, UNODC and other relevant international organizations, as appropriate, would include the following:

(a) The Security Council would encourage those regional States which have yet to enter into agreements with naval States and organizations for the transfer of piracy suspects to do so as a matter of priority;

(b) The Security Council would call upon States where the financiers, planners and organizers of piracy off the coast of Somalia are believed to be (see S/2011/360, annex IV) to investigate, prosecute or extradite such individuals to States willing and able to conduct prosecutions;

(c) The Security Council would call upon the relevant Somali authorities, "Puntland" and "Somaliland" to consider the urgent adoption of the legislation necessary for the effective prosecution of those suspected of piracy, consistent with the provisions of the United Nations Convention on the Law of the Sea;

(d) The Security Council would urge the relevant Somali authorities, "Puntland" and "Somaliland" to ensure that arrangements for the transfer of those convicted in other jurisdictions to Somalia for imprisonment become operationally effective at the earliest opportunity;

(e) The Security Council would encourage further donations to the Trust Fund to Support Initiatives of States Countering Piracy off the Coast of Somalia, including from the shipping industry and flag States, so that the proposed assistance by UNDP and UNODC to regional States referred to in this report can go ahead as planned;

(f) UNDP and UNODC would discuss and obtain the agreement (to the extent not already obtained) of the relevant authorities for projects engaging their police, marine police, prosecution services and courts to increase trial capacity to 24 trials per year each in "Puntland", "Somaliland" (UNDP), Seychelles, Kenya and Mauritius, and five cases per year in the United Republic of Tanzania (UNODC);

(g) UNODC would discuss and obtain the agreement (to the extent not already obtained) of the relevant authorities for projects to increase prison capacities, most urgently in "Puntland" and "Somaliland", but also in Seychelles, Kenya, the United Republic of Tanzania and Mauritius;

(h) UNDP and UNODC would assist with recruitment of the necessary judges, prosecutors, police and other legal professionals, and recruit the necessary international experts, as set out in the present report;

(i) In recruiting international experts to participate, assist and mentor in "Puntland" and "Somaliland", UNDP would actively consider the use of legal professionals and experts from the Somali diaspora, and to that end, contact the Somali Law Council and the Council of Somali Organizations[32] for names and contact details of willing and available individuals;

(j) UNDP and UNODC, in their projects with regional States, would look actively at the possibility of including capacity-building for the investigation and prosecution of those suspected of crimes of financing, planning or organizing acts of piracy;

(k) UNDP and UNODC would continue to develop guidance on the procedural and evidentiary requirements of "Puntland", "Somaliland" (UNDP) and the regional States engaged in, or considering playing a role in, piracy prosecutions (UNODC);

(l) UNODC, in cooperation with the Chairman of Working Group 2 of the Contact Group on Piracy off the Coast of Somalia, would assist the authorities of Somalia, "Puntland" and "Somaliland", to negotiate prisoner transfer arrangements with States in the region engaged in the prosecution of piracy suspects, or considering doing so.

B. Specific measures

115. Specific measures to be taken by UNDP and UNODC in relation to each country situation are set out in the paragraphs below.

[32] Based in London; see S/2011/360, annex III, sect. B.

1. Somalia

(a) "Puntland"

116. UNDP would:

(a) Recruit an international UNDP staff member to be stationed in Boosaaso;

(b) Provide expert assistance and guidance for the amendment of key legislation and its translation into Somali;

(c) Support, in partnership with Somali as well as international law faculties, legal training programs for the judiciary, the prosecution and law academies;

(d) Recruit international experts to provide advanced Criminal Investigation Division training and specialized training for prosecutors in the Attorney-General's Office;

(e) Provide for the refurbishment of the Criminal Investigation Division offices, including a basic forensic capacity;

(f) Complete construction and equipping of the police headquarters in Garoowe and establishment of the model police station in Boosaaso;

(g) Provide for the construction and equipping of a further three model police stations;

(h) Assist the Criminal Investigation Division to establish a national crime directorate;

(i) Provide expert assistance to draft a police act, regulations and a code of conduct;

(j) Provide specialized training and mentoring to the police and prosecutors in conduct, oversight and the handling of complaints;

(k) Procure basic police equipment, including a biometric registration system and uniforms;

(l) Conduct a maritime policing needs assessment;

(m) Procure vehicles and office equipment, including information technology, and forensic equipment;

(n) Procure enhanced security for courtrooms, witnesses, prosecutors, judges and other legal professionals;

(o) Support the recruitment of an additional 12 prosecutors;

(p) Provide for the refurbishment of the Attorney-General's Offices in Garoowe and Boosaaso;

(q) Recruit international experts to train and mentor prosecutors to establish a case-management system and to regulate conduct and address complaints;

(r) Recruit international experts to train and mentor judges and judicial support staff and the High Judicial Council in matters of judicial oversight and complaints;

(s) Fund legal representation for defendants through the legal aid scheme;

(t) Assist the courts to put case-management and case-tracking systems in place;

(u) Procure video-link equipment and train court staff in its use for witnesses to give evidence remotely;

(v) Recruit international experts to monitor trials.

117. UNODC would:

(a) Provide for the construction of a dedicated court to hear piracy cases;

(b) Continue the rehabilitation and expansion of Boosaaso prison;

(c) Provide for the construction of prison headquarters and a training academy in Garoowe;

(d) Continue to use international experts to train and mentor prison staff at Boosaaso and Qardho prisons;

(e) Provide expert assistance for the implementation of the new Prison Law;

(f) Use its international experts to provide continued monitoring and mentoring at Garoowe prison.

(b) "Somaliland"

118. UNDP would:

(a) Support the revision of key legislation, including the Somali Penal Code and Code of Criminal Procedure;

(b) Recruit international experts to provide advanced Criminal Investigation Division training and specialized training for prosecutors in the Attorney-General's Office;

(c) Provide for the refurbishment of the Criminal Investigation Division offices, including a basic forensic capacity;

(d) Assist the Criminal Investigation Division to establish a national crime directorate;

(e) Provide expert assistance to implement the Police Act and to develop regulations and a code of conduct;

(f) Provide specialized training and mentoring to the police and prosecutors in conduct, oversight and the handling of complaints;

(g) Procure basic police equipment, including office equipment and information technology and forensic equipment;

(h) Provide for the construction of an Attorney-General's Office in Boroma and Berbera;

(i) Procure vehicles and office equipment, including information technology, and forensic equipment;

(j) Procure enhanced security for courtrooms, witnesses, prosecutors, judges and other legal professionals;

(k) Support the recruitment of an additional 10 prosecutors;

(l) Recruit international experts to train and mentor prosecutors to establish a case-management system and to regulate conduct and address complaints;

(m) Recruit international experts to train and mentor judges and judicial support staff and the High Judicial Council in matters of judicial oversight and complaints;

(n) Fund legal representation for defendants through the legal aid scheme;

(o) Assist the courts to put case-management and case-tracking systems in place;

(p) Procure video-link equipment and train court staff in its use for witnesses to give evidence remotely;

(q) Recruit international experts to continue the monitoring of trials.

119. UNODC would:

(a) Procure the construction and refurbishment work necessary to provide additional spaces at Mandera, Berbera and Gabiley prisons;

(b) Use its international experts to train, mentor and continue to monitor prison conditions at those prisons;

(c) Discuss with the Government the possibility of use of prison space at Hargeysa for convicted pirates transferred from other jurisdictions.

2. Seychelles

120. UNODC would:

(a) Assist the Criminal Investigation Division to restructure its investigative capacity and provide training and mentoring through international Criminal Investigation Division experts;

(b) Support the construction and equipping of the Regional Anti-Piracy Prosecution and Intelligence Coordination Centre;

(c) Provide for the construction and equipping of a dedicated piracy court;

(d) Support the recruitment internationally of two additional Supreme Court judges and additional judicial support staff;

(e) Procure police vehicles and office furniture and equipment, including information technology equipment for case management and digital evidence processing;

(f) Provide training and mentoring through international experts to increase forensic skills;

(g) Procure forensic laboratory equipment;

(h) Provide for the construction of a secure exhibit storage facility;

(i) Recruit additional translators (Creole to English);

(j) Fund travel and provide training for prosecutors, and provide further basic office and information technology equipment;

(k) Provide training and mentoring for judges and basic office equipment and legal resources;

(l) Continue to fund the travel of foreign witnesses to give evidence at trials;

(m) Continue to fund transcription services, defence representation and interpretation;

(n) Fund the refurbishment of the prison to provide rehabilitative and educational opportunities and to improve safety;

(o) Continue to train and mentor prison staff.

3. Kenya

121. UNODC would:

(a) Continue training and logistical support to the Criminal Investigation Division and consider recruiting an international police adviser to be stationed in Mombasa;

(b) Support the recruitment of an additional five investigators;

(c) Provide for the refurbishment and equipping of the Mombasa Central Investigation Division offices;

(d) Provide for the rebuilding of the police armoury in Mombasa;

(e) Continue its training and mentoring through international experts in interviewing, statement taking and police technologies;

(f) Provide further training and mentoring to prosecutors through international experts;

(g) Support the recruitment of an additional eight prosecutors and paralegal assistance;

(h) Support the recruitment of an additional two magistrates and additional judicial support staff;

(i) Continue to support the training and mentoring of judges and support staff and their attendance at key meetings and conferences;

(j) Procure and support security for courtrooms, judges and other legal professionals;

(k) Continue to fund legal representation through the legal aid fund;

(l) Continue to provide training and mentoring to prison staff;

(m) Carry out an audit of the prison population with a view to reducing the number of prisoners on remand and those convicted but held beyond the duration of their sentence;

(n) Support the provision of psychiatric care for Somali prisoners.

4. Mauritius

122. UNODC would:

(a) Provide for the renovation of police facilities at Port Louis;

(b) Continue to provide international assistance to the police;

(c) Provide training and mentoring in investigative techniques through international experts for the police and coastguard;

(d) Support the police with the additional interviewing, transportation and custodial requirements;

(e) Support the recruitment nationally of an additional four prosecutors and two judges;

(f) Fund the attendance of prosecutors at training courses and meetings of Working Group 2 of the Contact Group and the shadowing of prosecutors in other jurisdictions;

(g) Provide legal library resources;

(h) Organize a meeting of police, prosecutors and the naval forces to develop guidance on the handing over of suspects and evidence;

(i) Fund and facilitate the participation of key legal professionals in international meetings and conferences;

(j) Provide for renovation work at Beau Bassin prison;

(k) Provide expert assistance to harmonize the Prison Act and regulations with international requirements;

(l) Provide expert assistance to the prison authorities to develop a strategic framework for the running of the prisons;

(m) Support the overseas training of a small number of senior prison officers;

(n) Consider with the Government the possibilities for the construction of a new prison facility in the longer term.

5. United Republic of Tanzania

123. Subject to the agreement of the Tanzanian authorities to accept the transfer of piracy suspects, UNODC would:

(a) Provide for the upgrading of facilities at the central police station, including the evidence storage facility, and renovation of cells at the police custodial premises;

(b) Provide a package of training, mentoring and monitoring of the police and the coastguard, including in investigative techniques and evidence handling;

(c) Provide expert assistance for the preparation of guidance for the handing over of evidence;

(d) Support learning exchange programmes with other jurisdictions in the region;

(e) Procure basic police equipment, including evidence bags and forensic and digital photography equipment;

(f) Provide advanced Criminal Investigation Division training and mentoring through international experts;

(g) Provide specialized training and mentoring to prosecutors through international experts;

(h) Provide specialized training and mentoring to judges through international experts, and fund the attendance of judges overseas to shadow piracy trials;

(i) Provide advanced training by international experts for judges in the law of the sea and cross-border investigations;

(j) Fund learning exchanges and attendance at international meetings and conferences for investigators, prosecutors and judges;

(k) Fund travel for foreign witnesses to attend trials;

(l) Fund legal representation for defendants;

(m) Support transcription and interpretation services;

(n) Provide for improvements to court holding areas and exhibit storage facilities;

(o) Procure security services for courtrooms, witnesses, judges and other legal professionals;

(p) Provide training and mentoring of prison staff through international experts;

(q) Provide expert assistance to review and amend prison regulations;

(r) Procure basic equipment, including medical supplies, and resources for rehabilitative and educational opportunities.

V. Conclusions

124. Consultations demonstrate that a great deal of work is under way to assist the regional States conducting piracy prosecutions and those considering doing so. If further international assistance were provided and the other matters set out in the present report are implemented, the projection is that in two years, Somalia, Kenya, Seychelles, Mauritius and the United Republic of Tanzania collectively could conduct a maximum of 125 piracy prosecutions per year in accordance with international standards, involving up to 1,250 suspects. This would be a very significant contribution to combating piracy off the coast of Somalia, and would be greater than the total number of suspects prosecuted globally to date (see the table in paragraph 10 above).

125. As a first step, an assessment, with the assistance of the naval coalitions and other States active in naval operations, could be useful to help to determine the number of piracy incidents in which the suspects have been apprehended but released, and the reasons underlying the releases. This information may assist both the Security Council and the Contact Group in their consideration of the most effective measures to combat piracy off the coast of Somalia, and assist regional States and the United Nations to determine the likely demand for prosecution capacity in the region for the foreseeable future.

126. On that basis, a number of implementation measures may be taken by the Security Council, UNDP, UNODC, and other relevant international organizations as appropriate, for specialized anti-piracy courts in States in the region. The availability of sufficient and suitable imprisonment facilities, including in Somalia, remains a key requirement. The scope for participation and/or assistance by international judges, prosecutors and other legal professionals, including those from the relevant diaspora populations, will be actively considered in each of these specialized anti-piracy courts.

127. The establishment of a regional prosecution centre in Seychelles would further a number of the goals identified by the Special Adviser to the Secretary-General. In particular, it would act as a focal point for regional and international support to the prosecution of piracy suspects and help to strengthen the rule of law in Somalia. The centre would enjoy relative advantages in respect of cost and speed of establishment, as it would be based in the national legal system and would provide a location offering relative logistical ease for the transfer of suspects by naval forces.

128. The Secretary-General stands ready to assist the Security Council in any way as it takes forward its deliberations on the basis of the present report.

United Nations S/2012/51

Security Council

Distr.: General
20 January 2012

Original: English

Letter dated 18 January 2012 from the Secretary-General addressed to the President of the Security Council

I wish to inform the members of the Security Council that the activities undertaken to fulfil the mandate outlined in paragraph 14 of resolution 1284 (1999) and requested in a letter dated 26 March 2008 from the President of the Council to the Secretary-General (S/2008/206) have led to expenditures amounting to $307,692.30 from 1 January to 31 December 2011. The funds were provided through transfers from the Escrow Account created pursuant to Council resolution 1958 (2010).

I have taken note of the statement made to the press by the Council on Iraq-Kuwait (SC/10490), in which the Council noted the agreement of its members to finance the continuation of the activities of the High-Level Coordinator for a period of six months.

Given that all parties should translate political statements of goodwill into concrete actions to enable progress during the coming months to resolve outstanding issues, the period ahead will require further intensification of the activities of the High-Level Coordinator. To that end, it would be necessary to allocate resources sufficient to finance the activities of the High-Level Coordinator and his support staff until 30 June 2012 in the amount of $245,300. It is suggested that these funds be earmarked from the fund balance of the Escrow Account created pursuant to Council resolution 1958 (2010).

Should the Council agree with this proposal, the funds will be transferred within the Escrow Account and made available to the Department of Political Affairs of the United Nations Secretariat, which backstops the activities of the High-Level Coordinator.

I should be grateful if you would bring this letter to the attention of the members of the Security Council.

(*Signed*) **BAN** Ki-moon

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United Nations S/2012/52

Security Council

Distr.: General
20 January 2012

Original: English

Letter dated 20 January 2012 from the President of the Security Council addressed to the Secretary-General

I have the honour to respond to your letter of 18 January 2012 (S/2012/51), in which you referred to Security Council resolution 1284 (1999), by which the mandate of the High-level Coordinator for missing Kuwaitis and third-country nationals and missing Kuwaiti property was established.

Members of the Council reiterate their continuing support for the important work of the High-level Coordinator.

I wish to inform you that the Security Council has decided to agree with your request that $245,300 be earmarked from the fund balance of the escrow account created pursuant to Security Council resolution 1958 (2010) to finance the continuation of the activities of the High-level Coordinator and his support staff until 30 June 2012.

The Security Council requests a comprehensive report on progress during the period of the present mandate of the High-level Coordinator by 30 June 2012.

(*Signed*) Baso **Sangqu**
President of the Security Council

12-21211 (E) 230112

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United Nations S/2012/53

Security Council

Distr.: General
20 January 2012

Original: English

Letter dated 18 January 2012 from the Secretary-General addressed to the President of the Security Council

I have the honour to refer to the command of the United Nations Interim Force in Lebanon (UNIFIL), established by Security Council resolutions 425 (1978) and 426 (1978) of 19 March 1978.

Following the usual consultations, it is my intention to appoint Major General Paolo Serra (Italy) as Head of Mission and Force Commander of UNIFIL. Major General Paolo Serra will replace Major General Alberto Asarta Cuevas, who will relinquish the post on 28 January 2012.

I should be grateful if you would bring the present letter to the attention of the members of the Security Council.

(*Signed*) **BAN** Ki-moon

12-21218 (E) 230112

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United Nations S/2012/54

Security Council

Distr.: General
20 January 2012

Original: English

Letter dated 20 January 2012 from the President of the Security Council addressed to the Secretary-General

I have the honour to inform you that your letter dated 18 January 2012 (S/2012/53) concerning your intention to appoint Major General Paolo Serra (Italy) as Head of Mission and Force Commander of the United Nations Interim Force in Lebanon has been brought to the attention of the members of the Security Council. They take note of the intention and information contained in your letter.

(*Signed*) Baso **Sangqu**
President of the Security Council

12-21224 (E) 230112

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United Nations S/2012/55

Security Council

Distr.: General
23 January 2012

Original: English

Letter dated 20 January 2012 from the Secretary-General addressed to the President of the Security Council

I have the honour to write to you to provide information on the support offered by the United Nations to the League of Arab States (LAS) observer mission to the Syrian Arab Republic.

I received communications from the Secretary-General of the League of Arab States, Nabil Elaraby, in particular letters dated 19 December 2011 and 10 January 2012, in which he requested the United Nations to dispatch "as a matter of extreme urgency" a team of experts to assist LAS in fulfilling the mandate issued by the Council of Ministers of the League to develop and prepare the modalities and mechanisms to provide protection for the Syrian civilian population. In response, and after consultations, the United Nations High Commissioner for Human Rights replied to Dr. Elaraby on 11 January 2012 to confirm the readiness of her Office to deploy a team of human rights and protection experts to provide training on human rights monitoring for this purpose.

The Office of the United Nations High Commissioner for Human Rights (OHCHR) regularly provides human rights and protection training upon request from Governments to law enforcement officials and other actors as part of its technical cooperation programme and has developed standard training modules to that end. Such assistance is contemplated by cooperation agreements between LAS and the United Nations Secretariat, and is specifically requested by the General Assembly in paragraphs 4, 5 and 6 of resolution 65/126.

The formal communications to and from Dr. Elaraby were accompanied by working-level contacts between OHCHR and the League to determine the precise modalities for the training. OHCHR proposed, and LAS agreed, that a team of four trainers and experts would travel to Cairo on 16 January 2012 to provide a two-day training on human rights monitoring to the members of the observer mission. At the request of the League, it was envisaged that the training would focus on applicable principles and methodology for human rights monitoring, particularly with respect to visits to persons in detention centres, the release of political prisoners, the monitoring of demonstrations and cases of enforced or involuntary disappearances of individuals.

At the request of the League, the training mission was postponed on 15 January 2012, before its deployment, until further notice, pending a decision of the League on the future of the observer mission, to be taken at a meeting scheduled

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for 19 January 2012. OHCHR was subsequently informed that the meeting had been rescheduled for 22 January 2012.

OHCHR has informed LAS that its team of trainers and experts remains on standby to travel to Cairo to provide the training.

(*Signed*) **BAN** Ki-moon

United Nations S/2012/56

Security Council

Distr.: General
23 January 2012

Original: English

Letter dated 23 January 2012 from the Permanent Observer of Palestine to the United Nations addressed to the President of the Security Council

I have the honour to request that, in accordance with its previous practice, the Security Council invite the Permanent Observer of Palestine to the United Nations to participate in the meeting of the Security Council which is to be held on Tuesday, 24 January 2012, regarding the situation in the Middle East, including the Palestinian question.

(*Signed*) Riyad **Mansour**
Ambassador
Permanent Observer

12-21276 (E) 230112

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United Nations S/2012/57

Security Council

Distr.: General
23 January 2012

Original: English

Letter dated 23 January 2012 from the Permanent Representative of Eritrea to the United Nations addressed to the President of the Security Council

I have the honour to forward a letter from Osman Saleh, Minister for Foreign Affairs of the State of Eritrea, addressed to you (see annex), in connection with the recent deplorable killing of five foreign tourists in northern Ethiopia and the deliberate misrepresentation of the tragic events in a letter sent to you on 18 January 2012 by Ethiopia.

I would be most grateful if the present letter and its annex could be issued as a document of the Security Council.

(*Signed*) Araya **Desta**
Ambassador
Permanent Representative

12-21321 (E) 260112

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Annex to the letter dated 23 January 2012 from the Permanent Representative of Eritrea to the United Nations addressed to the President of the Security Council

In its letter of 18 January 2012 to the Security Council, the Government of Ethiopia misconstrues the tragic events of the deplorable killing of five foreign tourists in northern Ethiopia by armed gunmen to falsely accuse Eritrea of "direct involvement". Furthermore, the Ethiopian regime ratchets these trumped-up charges to goad the Council into taking punitive measures against Eritrea and warns that "it will [otherwise] be obliged to take whatever action is necessary to stop the activities of the Eritrean regime once and for all".

Eritrea will not dwell much, in the present letter, on the utterly groundless accusations deliberately peddled by the Ethiopian regime to serve other ulterior motives and objectives, as it has already pronounced its position through its press statement earlier last week. However, Eritrea wishes to underline that the cynical posturing of the Addis Ababa regime that it has every right to invoke Article 51 of the Charter of the United Nations "in self-defence" and launch another war of aggression against Eritrea is not only legally hollow but carries the potential seeds of grave regional destabilization and conflagration. In the event, Eritrea wishes to emphasize and bring to the attention of the Security Council the following cogent points:

(a) The Ethiopian regime has flaunted international law, the Charter of the United Nations, and its treaty obligations to occupy sovereign Eritrean territories for the last 10 years. The authorities in Addis Ababa continue to flagrantly violate the provisions of Article 33, paragraph 1, of the Charter on peaceful and arbitral settlement of disputes among Member States to effectively reject the final and binding delimitation and demarcation decisions of the Eritrea-Ethiopia Boundary Commission to occupy by force the sovereign Eritrean town of Badme and other territories. It is patently clear that Ethiopia's dangerous acts constitute a grave violation of international law and impinge on regional peace and security. However, the excesses of the Ethiopian regime remain tolerated with impunity to date for reasons that we shall revert to later;

(b) As we underlined in our press statement of 18 January, the ill-advised attempts of the Ethiopian regime to take the senseless and cowardly killing of innocent civilians as a blessing in disguise to vilify Eritrea is not only morally reprehensible, but its threat to use force against another Member State on trumped-up charges is a violation of Article 2, paragraph 4, of the Charter. Eritrea maintains that this behaviour is not acceptable and should not be tolerated anymore;

(c) As Eritrea has emphasized through its several communications to the Security Council, the unfair and unfounded resolutions (1907 (2009) and 2023 (2011)) that have imposed various sanctions against Eritrea, including an arms embargo, carry the risk of emboldening Ethiopia to contemplate reckless acts. Its current sabre-rattling is indeed a vivid corroboration of what may be in store unless the Council takes appropriate remedial action;

(d) Ethiopia's hollow accusations should not and cannot be taken in isolation. In the past two months, Eritrea has spent a lot of time and energy dispelling the equally preposterous allegations emanating from Kenya accusing it of supplying three planeloads of arms to Al-Shabaab through the town of Baidoa.

Those accusations were timed and synchronized with impending discussions of the Security Council on draft resolution 2023 (2011). The current accusations of Ethiopia have also occurred a few weeks before the forthcoming African Union summit in Addis Ababa, where Eritrea's representation will not be through its highest authorities. One can thus easily see the concerted and subtle subterfuges that have been set in motion to entrap Eritrea;

(e) As we intimated before, the Security Council's kid glove treatment of Ethiopia, the unfair punitive sanctions that have been imposed against Eritrea and the myriad accusations that are woven day in and day out to sully Eritrea's image are not all the workings and machinations of the Ethiopian regime alone. Although Eritrea does not prefer to go into greater detail at this juncture, it nonetheless wishes to underline that the whole jigsaw puzzle cannot be understood in isolation without factoring in the unprovoked hostility of the United States, which has taken the position that it has to promote its perceived interests in the region;

(f) The repeated harpings of the Ethiopian regime to implicate and portray Eritrea as the main culprit in the military activities of its multiple opposition movements and to repackage those activities as "conceived, planned and executed by Eritrea" is risible and really difficult to fathom. The Ethiopian regime does not, in fact, mince its words inasmuch as its declared intentions and actions are concerned with creating and propping up armed insurgents to topple the Government of Eritrea in pursuit of its avowed objective of "forcible regime change" in Eritrea. As mentioned in our letter of 4 January to the Security Council, the adviser to Ethiopia's Prime Minister and a senior member of the ruling Political Bureau openly announced in the Awasa Conference that "Ethiopia welcomes the timely convening of the conference to formulate new strategies to topple the Eritrean government" and that "Ethiopia will provide them with all the support they need to achieve the goals of [their] struggle". Indeed, these subversive groups make forays into Eritrea from Ethiopia to launch terrorist activities from time to time. Eritrea has chosen not to dwell on these events because they will only eclipse and divert attention from the profound and critical issues at stake. But it has never been driven to take, and does not subscribe to, reciprocal action as a matter of quid pro quo.

In conclusion, Eritrea wishes to urge the Security Council to re-examine, in the interests of peace and justice, the multifaceted situation that is prevailing in our area in its entirety and complexity. In this respect, Eritrea further urges the Council to ensure Ethiopia's prompt compliance with its treaty obligations and to respect international law.

(*Signed*) Osman **Saleh**
Minister for Foreign Affairs

United Nations S/2012/58

Security Council

Distr.: General
23 January 2012

Original: English

Letter dated 23 January 2012 from the Permanent Representative of the Sudan to the United Nations addressed to the President of the Security Council

I have the honour to transmit to you, and through you to the members of the Security Council, a letter dated 5 January 2012 from H.E. Ms. Gamar Khalipha Habani, Secretary-General of the Sudanese National Council for Child Welfare, addressed initially to the representative of the United Nations Children's Fund in the Sudan regarding the flagrant involvement of the Sudan People's Liberation Army and the Sudan People's Liberation Movement in mass recruitment of children in Southern Kordofan State. The letter also provides details about the transportation of the children to the Republic of South Sudan for training (see annex).

Having brought this to your kind attention, I would be grateful if the present letter and its annex were circulated as a document of the Security Council.

(*Signed*) Daffa-Alla Elhag Ali **Osman**
Permanent Representative

12-21315 (E) 250112

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Annex to the letter dated 23 January 2012 from the Permanent Representative of the Sudan to the United Nations addressed to the President of the Security Council

[Original: Arabic]

Subject: Children recruited by Sudan People's Liberation Army/Sudan People's Liberation Movement in South Kordofan

It was widely reported during past weeks that Sudan People's Liberation Army (SPLA) and Sudan People's Liberation Movement (SPLM) were actively involved in recruiting children in the State of South Kordofan. This disturbing information urged us to act and conduct investigations in different areas to confirm the veracity of the reports. We were able to obtain confirmed information that SPLA/SPLM have actually recruited a number of children in South Kordofan and transported them from their home areas as follows:

- 175 children were transported on 17 July 2011 from Kawalib area in the eastern mountains to Faryang area in the Unity State of the Republic of South Sudan
- 350 children were transported on 14 October 2011 from Haiban and Moro areas in the southern mountains to Faryang area in the Unity State of the Republic of South Sudan
- 75 children were transported on 14 October 2011 from Salara province to Faryang in the Unity State of the Republic of South Sudan
- 300 children were transported on 15 October 2011 from Boram province.

Therefore, the total number of children transported from their original areas during that period is 900 children, in addition to 1,000 children transported individually to Faryang area in the Unity State of the Republic of South Sudan. These children are currently in various SPLA camps; they were gathered under the pretext of schooling, but that was a lame excuse, as they were forced into military operations and engaged in hostilities.

We utterly condemn and denounce the forced deportation of these children by SPLA/SPLM in South Kordofan and their recruitment and engagement in military operations. This act violates their rights and amounts to a flagrant moral and legal violation of the principles and provisions of international and regional conventions on the rights of the child, particularly the Convention on the Rights of the Child and its two optional protocols and the African Charter on the Rights and Welfare of the Child. It also amounts to a violation of Security Council resolutions on children in armed conflicts.

We therefore call upon the United Nations Children's Fund and the office of Ms. Radhika Coomaraswamy, the Special Representative of the Secretary-General for Children and Armed Conflicts, to investigate the violations perpetrated by SPLA/SPLM in South Kordofan of all moral obligations and international and humanitarian standards by forcibly transporting children from their home areas to another State and engaging them in military operations.

(*Signed*) Gamar Khalipha **Habani**
Secretary-General

United Nations S/2012/59

Security Council

Distr.: General
24 January 2012

Original: English

Letter dated 23 January 2012 from the Permanent Representative of Tunisia to the United Nations addressed to the President of the Security Council

I have the honour to write to you in reference to document S/2012/10 dated 2 January 2012 regarding matters of which the Security Council is seized and the stage reached in their consideration.

In this connection, I have the honour to inform you that, upon instructions from my Government, Tunisia requests the retention of the following items, listed in paragraph 3 of the above-mentioned document:

71. Letter dated 1 October 1985 from the Permanent Representative of Tunisia to the United Nations addressed to the President of the Security Council

74. Letter dated 19 April 1988 from the Permanent Representative of Tunisia to the United Nations addressed to the President of the Security Council

I should be grateful if the present letter could be circulated as a document of the Security Council.

(*Signed*) Othman **Jerandi**
Ambassador
Permanent Representative of Tunisia to the United Nations

12-21412 (E) 260112

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United Nations S/2012/60

Security Council

Distr.: General
24 January 2012

Original: English

Letter dated 24 January 2012 from the Permanent Representative of the Sudan to the United Nations addressed to the President of the Security Council

I have the honour to write to you in reference to document S/2012/10 dated 2 January 2012 concerning matters of which the Security Council is seized and the stage reached in their consideration. In this connection, upon instructions from my Government, I have the honour to inform you that the Government of the Sudan requests the retention of the following item listed in paragraph 3 of the above-mentioned document:

60. Letter dated 20 February 1958 from the representative of the Sudan addressed to the Secretary-General.

I should be grateful if you would have the present letter circulated as a document of the Security Council.

(*Signed*) Daffa-Alla Elhag Ali **Osman**
Permanent Representative

12-21425 (E) 250112

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United Nations S/2012/60*

Security Council

Distr.: General
24 January 2012

Original: English

Letter dated 24 January 2012 from the Permanent Representative of the Sudan to the United Nations addressed to the President of the Security Council

Upon instructions from my Government, I have the honour to inform you that the Government of the Sudan wishes to have retained on the list of matters of which the Security Council is seized item 60 in paragraph 3 of the summary statement by the Secretary-General on matters of which the Security Council is seized and the stage reached in their consideration (S/2012/10), namely, the item entitled "Letter dated 20 February 1958 from the representative of the Sudan addressed to the Secretary-General" (S/3963).

I should be grateful if you would have the present letter circulated as a document of the Security Council.

(*Signed*) Daffa-Alla Elhag Ali **Osman**
Permanent Representative

* Reissued for technical reasons on 31 January 2012.

12-21425* (E) 310112

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United Nations A/66/669–S/2012/61

General Assembly
Security Council

Distr.: General
25 January 2012

Original: English

General Assembly
Sixty-sixth session
Agenda item 35
Protracted conflicts in the GUAM area and their implications for international peace, security and development

Security Council
Sixty-seventh year

Identical letters dated 24 January 2012 from the Permanent Representative of Georgia to the United Nations addressed to the Secretary-General and the President of the Security Council

I have the honour to transmit herewith a statement of the Ministry of Foreign Affairs of Georgia dated 20 January 2012, in reaction to allegations recently made by the Russian Prime Minister during a meeting with journalists in Novo-Ogaryovo (see annex).

I should be grateful if you would have the present letter and its annex issued as a document of the sixty-sixth session of the General Assembly, under agenda item 35.

(*Signed*) Alexander **Lomaia**
Ambassador
Permanent Representative

12-21501 (E) 270112

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Annex to the identical letters dated 24 January 2012 from the Permanent Representative of Georgia to the United Nations addressed to the Secretary-General and the President of the Security Council

Statement of the Georgian Foreign Ministry in reaction to allegations recently made by the Russian Prime Minister during a meeting with journalists in Novo-Ogaryovo

During a meeting held with journalists in Novo-Ogaryovo on 18 January 2012, the Russian Prime Minister and presidential candidate, Vladimir Putin, once again referred to the theme of Georgian-Russian relations.

As Mr. Putin again gave voice to now well-known propaganda clichés when referring to the 2008 war between Georgia and Russia, there is no need not to remind him of the fact that, as recently as during a meeting with Russian servicemen held in Vladikavkaz on 21 November 2011, the Russian President, Dimitri Medvedev, unequivocally confessed that the real goal of Russia's military aggression in 2008 was to hamper Georgia's efforts to integrate with the North Atlantic Treaty Organization. In the light of this confession, the "assertions" Mr. Putin recently made in Novo-Ogaryovo regarding Russia's aggression make no sense at all.

The origins of the events of 2008 can be traced back over several years, a period during which Mr. Putin's role has been significant. Immediately after he came to power, Mr. Putin removed those members of the Tskhinvali government who had been conducting a fruitful dialogue with Georgia's central authorities — dialogue that could have led to the peaceful resolution of the conflict in coordination with the Georgian Government in Tbilisi — and replaced them with a separatist regime under the authority of Eduard Kokoity, a known criminal who quickly put an end to any attempt at entertaining a constructive dialogue with the Georgian authorities. Officials belonging to the Russian military and "special" agencies rapidly assumed leading positions in the Tskhinvali government alongside Mr. Kokoity, and their arrival was followed by the supply of weapons to illegal armed units under their control and the mass distribution of Russian passports to the populations of the regions of Tskhinvali and Abkhazia.

Later, the Russian Government "responded" to the West's recognition of Kosovo's independence by attempting to once and for all sever Georgia from its occupied territories. Russia began by declaring that it would no longer be bound by the terms of the 19 January 1996 decision of the Council of the Heads of State of the Commonwealth of Independent States, thus clearing the way for its intense militarization of the regions of Tskhinvali and Abkhazia. Mr. Putin then instructed the Russian Government to strengthen its ties with the two regions of Georgia with the goal of binding them more closely to Russia. This, in turn, was followed by the deployment to Abkhazia of Russian "railway troops", whose task was to ensure that railway infrastructure was adequate for the transportation of armoured vehicles throughout the region. Russia's full-scale military aggression against Georgia in 2008 was but the logical continuation of this chain of events. Besides the Tskhinvali region, Russian troops also intervened in Abkhazia without firing a single shot, a fact that leaves no doubt as to who unleashed the war in 2008 and why.

During the recent meeting in Novo-Ogaryovo, Mr. Putin expressed his "concern" over the fact that Russia would have to aim its missiles at targets in Georgia if American anti-missile systems are based in the country. He seemingly forgot that Russia already occupies 20 per cent of Georgia's territory, that Russian "Iskander" and "Tochka-U" missile systems and BM-30 "Smerch" multiple-launch rocket systems are already aimed at Georgia and that hundreds of armoured vehicles and masses of modern military equipment remain concentrated in Georgia's Russian-occupied regions. At the same time, Mr. Putin declared that he will only entertain a dialogue with Georgia's political opposition, thus rejecting outright the possibility of inter-State dialogue between Georgia and Russia.

As far as the issue regarding Grigol Chkhartishvili (Boris Akunin) is concerned, Mr. Akunin is one of the members of the newly founded League of Voters. The League has criticized the elections, which is why both it and Mr. Akunin have been criticized by Mr. Putin. The Russian writer was cynically reminded of his Georgian origins, and his position was explained by his anxieties about Georgia. According to Mr. Putin's logic, the hundreds of thousands of people rallying on the streets of Moscow and other Russian cities must also be of Georgian extraction.

Based upon the above, one may draw the conclusion that the corruption that pervades Russia (which can largely be traced back to those in Government) as well as the chaos and the instances of fraud that marked the elections to the Russian Duma have brought Russia face to face with a political crisis. In his attempts to extricate the country from this crisis, Mr. Putin seems to have fallen back upon the tried and tested method of finding an external enemy and has assigned this role, as usual, to Georgia.

United Nations S/2012/62

Security Council

Distr.: General
25 January 2012

Original: English

Letter dated 24 January 2012 from the Secretary-General addressed to the President of the Security Council

I have the honour to refer to the United Nations Mission in South Sudan (UNMISS) and the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO). Given the current security situation in South Sudan, particularly the ongoing crisis in Jonglei State, I have taken the decision to temporarily redeploy, for a period of three weeks, two Mi-17 helicopters and 33 personnel from the Bangladesh Utility Aviation Unit, currently deployed in MONUSCO, to UNMISS. The helicopters will be used to transport military equipment and, if required, provide in extremis extraction for United Nations and associated personnel.

I would like to express my gratitude to the Government of Bangladesh for its support to UNMISS. I would also like to thank the Governments of Ethiopia and Uganda for their early response to my request for emergency support to UNMISS as well as their continued willingness to support United Nations peacekeeping.

I should be grateful if you would bring the present letter to the attention of the members of the Security Council.

(*Signed*) **BAN** Ki-moon

12-21467 (E) 250112

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